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CASE NO.: _____ OFFICE OF THE CLERK

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In The
Supreme Court of the United States of America

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ROBERT KAHRE,

Petitioner,

vs.

UNITED STATES FIDELITY AND GUARANTY CO.

Respondent.

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On Petition for Writ of Certiorari
To The United State Court of Appeals
For The Ninth Circuit

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***PETITION FOR WRIT OF CERTIORARI***

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Robert Kahre, In pro per
(Petitioner of record)
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## ***QUESTIONS PRESENTED FOR REVIEW***

I. DID THE U. S. DISTRICT COURT AND COURT OF APPEALS HAVE JURISDICTION OVER THE PERSON OF RESPONDENT, USF&G, IF IT DID NOT REGISTER WITH THE STATE OF NEVADA, OFFICE OF THE SECRETARY OF STATE?

II. DID THE U. S. DISTRICT COURT AND COURT OF APPEALS HAVE JURISDICTION OVER THE SUBJECT MATTER IF RESPONDENT, USF&G, DID NOT HAVE A WRITTEN CONTRACT UNDER THE LAWS OF THE STATE OF NEVADA?

III. IS THE TRIAL COURT REQUIRED TO DETERMINE THE DIFFERENCE IN VALUE BETWEEN THE GOLD AND SILVER COIN MINTED PURSUANT TO THE CONSTITUTION FOR THE UNITED STATES OF AMERICA AND 31 U.S. C. 5112, AND OTHER MEDIUMS OF EXCHANGE, AND IF SO, WHAT STANDARDS ARE THE COURTS REQUIRED TO APPLY IN CASES OF CONTRACTS, DAMAGES, OTHER JUDGMENTS, OR FEES WHERE THE DIFFERENT MEDIUMS OF EXCHANGE AND THEIR VALUES ARE IN ISSUE?

IV. IS THE COURT REQUIRED TO ABIDE BY FRCP RULE 55, AND WAS IT AN ABUSE OF DISCRETION FOR THE COURT (1) TO GRANT DEFAULT JUDGMENT WHEN KAHRE WAS NOT SERVED WITH USF&G'S APPLICATION FOR DEFAULT JUDGMENT AND WAS ENJOINED BY THE COURT FROM ANSWERING; AND (2) TO GRANT DEFAULT

JUDGMENT WITHOUT HEARING OR TRIAL TO ASSESS DAMAGES, WHEN THE AMOUNT OF DAMAGES WAS NOT CERTAIN, MATERIAL FACTS WERE IN DISPUTE, AND USF&G PLEAD THREE DIFFERENT AMOUNTS OF DAMAGE?

V. CAN A NON-ARTICLE III ADJUDICATOR IN THE FEDERAL COURT SYSTEM SIT IN AN ARTICLE III, SECTION 2, DIVERSITY SUIT, AND IF NOT, ARE THE ORDERS AND JUDGMENTS OF A NON-ARTICLE III ADJUDICATOR VOID FOR WANT OF AUTHORITY?

VI. DID THE LOWER COURTS APPLY THE WRONG STANDARDS FOR RECUSAL OF A JUDGE UNDER 28 U.S.C. 455?

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## STATEMENT OF SUPREME COURT JURISDICTION

The Order being sought to be reviewed was entered on November 18, 1999 (Apdx. 1 - 2), by the United States Court of Appeals for the Ninth Circuit, denying Petitioner's appeal in that court. Petitioner thereafter moved the Court of Appeals for rehearing of its order of November 18, 1999. The Court of Appeals denied the rehearing via its Order of February 9, 2000 (Apdx. 3), and issued its mandate on February 28, 2000 (Apdx. 4).

This Supreme Court has jurisdiction of this matter pursuant to 28 USC 1254 and Supreme Court Rule 10. The judgments and rulings below are in conflict with the decisions of: (1) another Court of Appeals, (2) have sanctioned a departure from the accepted and usual course of judicial proceedings, and (3) have decided a federal question in a way that conflicts with the rulings of this Supreme Court.

## NINTH CIRCUIT COURT OF APPEALS JURISDICTION

The Appellate Court for the Ninth Judicial District had jurisdiction pursuant to the *Constitution for the United States of America*, Article III, Section 2, and the Laws made in Pursuance thereof, including but not limited to, 28 U.S.C. 1291 and 2106.

## CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES & RULES, ETC.

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## STATEMENT OF THE CASE

Robert Kahre conducts his business and accounting in Constitutional gold and silver Coin minted in accordance with Article I, Section 8, Clause 5, and 31 U.S.C. § 5112, and pays those whom he contracts with in said gold and silver Coin, in hand. Said Coins are deemed legal tender at face value via 31 U.S.C. § 5112(h) and 31 U.S.C. 5103, and are also taken as legal tender at face value by both the Courts of the State of Nevada and the Federal Courts. Apdx. 49-52. USF&G claims is had issued policies to Kahre for two of his companies, Wright Painting & Drywall, and Bobby K's Carpet Cleaning Service, claiming that the premium for said policies were based upon a percentage of the business' payroll. A dispute arose as USF&G decided to not consider said Coins as legal tender at face value as intended by Congress, but assigned to said Coins a value different from that which appears on the face of said Coins, based upon a fluctuating foreign exchange rate.

On August 16, 1996, Respondent, USF&G, a foreign corporation doing business in the State of Nevada, commenced the action in the U.S. District Court upon grounds of diversity of citizenship and breach of contract, accounting, and attorneys fees. Kahre filed a motion to dismiss on September 6, 1996, arguing that USF&G lacked a certificate of corporate existence and had no certificate of authority to do business in the State, and did not have a written contract with Petitioner. Certificates of non-existence

from the Office of the Secretary of State were brought into evidence. Apdx. 61-67. Kahre's motion to dismiss was denied on January 15, 1997. Kahre filed an objection to said Order and a Petition to Reconsider on January 28, 1997 (CR#8), and USF&G filed a response to said Petition on February 7, 1997 (CR#9). On February 26, 1997, Kahre received an extension of time until March 14, 1997 (CR#11) to respond to USF&G's response (CR#9). On March 3, 1997, in contravention of the extension of time, Howard McKibben denied Kahre's Petition to Reconsider, and granted sanction against Kahre and in favor of USF&G in the amount of $350.00. On March 14, 1997, in compliance with his extension of time, and in response to USF&G's response (CR#9), Kahre filed the Writ of Praecipe Order to Show Cause in the Original in the Alternative (CR#13), which was later stricken on January 7, 1998 (CR#25) by Lloyd D. George on motion of Howard McKibben on May 16, 1997. Said Order of January 7, 1998 granted sanctions against Kahre in the amount of 1,000, and enjoined Kahre from filing further pleadings without leave of court. Kahre was thus enjoined from filing any answer in the District Court case.

On March 19, 1997, in apparent violation of FRCP Rule 55(a), and while Kahre's response (CR#13) to USF&G's response (CR#9) to Kahre's Petition to Reconsider (CR#8) was still pending, USF&G sought default against Kahre by the Clerk (CR#14). Kahre never received a copy of USF&G's application to the Clerk for default. The Clerk, in apparent violation of FRCP Rule 55(a), entered a default against Kahre on March 28, 1997 (CR #17) after Kahre had already appeared in the case, and which Kahre did not become aware of until after Judgment has been entered against him.

On June 6, 1997, Kahre filed his Objection to

Unlawful Appearance and Petition for Criminal Prosecution (CR#23). On February 4, 1998, Kahre filed his Notice of Intent to Petition for Recusal of Lloyd D. George (CR#26). On April 6, 1998, Lloyd D. George issued an Order (CR#29) denying and striking Kahre's Notice of Intent to Petition for Recusal of Lloyd D. George, and denying Kahre's Objection to Unlawful Appearance and Petition for Criminal Prosecution.

On May 13, 1998, USF&G filed its Application for Default Judgment (CR#26), which was never served on Kahre, contained no hearing date, and which Kahre did not become aware of until July 23, 1998, when he received the Order dated July 20, 1998, in which Lloyd D. George granted default judgment against Kahre and in favor of USF&G in the amount of 75,759.52 (CR#26). On August 3, 1998, Kahre filed a Motion to Vacate the July 20, 1998 Order and Judgment (CR#37). On November 25, 1998, the Court entered an Order denying Kahre's Motion to Vacate (CR#40). On December 23, 1998, Kahre filed a Notice of Appeal in the case (CR#41A). On January 8, 1999, Kahre filed his Motion for Leave to File Amended Notice of Appeal &/or for Extension of Appeal Time; and to Correct the Clerks Transmittal of Notice of Appeal (CR#46). The Amended Notice of Appeal (CR#46) contained a listing of interlocutory Orders Kahre was challenging on appeal, but which were omitted from the Original Notice of Appeal.

Kahre appealed the case to the Ninth Circuit Court of Appeals, which in turn, affirmed the judgment of the U.S. District Court in its entirety, via its Order of November 18, 1999 (Apdx. 1-2), and denied rehearing of same (Apdx. 3). The Ninth Circuit Court's determination of the issues presented on appeal is in conflict with the determinations of other Circuit Courts, with the rulings of this Supreme Court,

and is in contravention of the Constitution and laws of the State of Nevada, and the Constitution for the United States of America, the laws made in pursuance thereof, and the intent of Congress, as hereinafter set forth.

**ISSUE I**

DID THE U. S. DISTRICT COURT AND COURT OF APPEALS HAVE JURISDICTION OVER THE PERSON OF RESPONDENT, USF&G, IF IT DID NOT REGISTER WITH THE STATE OF NEVADA, OFFICE OF THE SECRETARY OF STATE?

USF&G is a foreign corporation doing business in the State of Nevada. NRS 80.010(1), mandates that:

> "Before commencing or doing any business in this State, every corporation organized pursuant to the laws of another State . . . must: (emphasis added)
> (a) File in the office of the Secretary of the State:
> (1) a certificate of corporate existence issued not more than 90 days before the date of filing by an authorized officer of the jurisdiction of its incorporation setting forth the filing of documents and instruments of authority by which the corporation was created . . ."

USF&G does not have any certificate of corporate existence. Apdx. 66-67. Foreign insurance companies doing business in the State of Nevada carry the additional burden of having to have an additional certificate of authority to do business in the State issued by the Insurance Commissioner imposed by NRS 680A.060(1):

"NRS 680A.060 Certificate of Authority required; penalty.

1. A person shall not act as an insurer and an insurer shall not transact insurance in this state by mail or otherwise, except as authorized by a certificate of authority issued by the commissioner and then in full force, except as to such transactions as are expressly otherwise provided in this code."

USF&G is required to, and has failed, to comply with NRS 80.010, being a foreign corporation and not having filed a certificate of corporate existence, and was not authorized to commence an action under Nevada State law. NRS 80.210 provides for and imposes certain penalties and disabilities for corporations that fail or refuse to comply with the uniform mandates of NRS 80.010:

NRS 80.210

"1. Every corporation which fails or neglects to comply with the provisions of NRS 80.010 to 80.040, inclusive:

(a) is subject to a fine of not less than $500, to be recovered in a court of competent jurisdiction; and

(b) Except as otherwise provided in this subsection, *may not commence any action in any court of this state until it has fully complied* with the provisions of NRS 80.010 to 80.040, inclusive . . ." (emphasis added)

Kahre has continually objected from the outset upon grounds that U.S. District Court lacked jurisdiction over the person of USF&G, and over the subject matter of their complaint as a matter of State law. Apdx. 61-67. Nevada Attorney General's Opinion 506 of May 7, 1968 clearly

states that NRS 80.010 has *general* application to *all* foreign corporations, and there are no exceptions in Nevada statutes that apply in this case. Apdx. 33.

The U.S. District Court was required to apply the substantive laws of the State of Nevada. 28 U.S.C. 1652; *Erie Railroad Co. v. Tompkins*, 304 U.S. 64. The test for determining the "substantive" laws of the State is set forth in *Hanna v. Plumer*, 380 U.S. 460 (1965). If it is found that a State has imposed a statutory bar, the U.S. Courts must apply such a bar. *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949). Upon failure to comply with NRS 80.010, USF&G was precluded by NRS 80.210(1)(b) from commencing and maintaining an action and lacks standing to be before the U.S. District Court. *Union Brokerage Co. v. Jensen*, 88 L.Ed. 1227 (1944).

The NRS do not provide any "express" exemption from the the operation and requirements of NRS 80.010 for foreign insurance corporations. The requirements of NRS chapters 679-680B et seq., are in addition and supplemental to the requirements of NRS 80.010. USF&G has failed to establish a valid defense as to its lack of standing to be before the Court, and to commence and maintain a diversity action in the U.S. District Court. NRS 80.210(1)(b) (Apdx. 37).

The Ninth Circuit Court's Order of November 18, 1999 (Apdx 1-2), stated that USF&G had a "certificate of authority to do business in Nevada," and disregarded NRS 80.010, and the statutory penalties and bar imposed under NRS 80.210. The Ninth Circuit was erroneously referring to only the certificate of authority issued by the Insurance Commissioner and the requirements of NRS 680A.070(3) (Apdx. 40-42), ignoring the fact that these requirements did not provide an exemption from NRS 80.010. USF&G was additionally required to file a certificate of corporate existence

with the Secretary of State, but did not.

The *Constitution for the State of Nevada*, Article VIII, Section 1, prohibits any special laws relating to corporate powers.

> "**Corporations formed under general laws; municipal corporations formed under special acts**. The Legislature shall pass no Special Act in any manner relating to corporate powers except for Municipal purposes; but corporations may be formed under general laws; and all such law may from time to time, be altered or repealed."

USF&G is a private foreign Insurance Company, not a municipality, and is required to comply with the general laws of the State of Nevada, and cannot claim the benefit of an unconstitutional act. *Also see* Apdx.32, *Nevada Constitution*, Art. IV Sec. 21; and Apdx. 38, NRS 679A.150.

The Ninth Circuit Court of Appeals failed to address how it could interpret NRS 680A.070(3) to provide special legislation which exempts, amends or repeals the provisions of NRS 80.010 and NRS 80.210 and also violate Article VIII, Section 1 of the State constitution. The Order, as it stands, is in contravention to the foreign corporate filing requirements of the State of Nevada and is contrary to the determination of this Supreme Court in *Union Brokerage Co. v. Jenson*, 88 L.Ed. 1227 (1944).

## ISSUE II

DID THE U. S. DISTRICT COURT AND COURT OF APPEALS HAVE JURISDICTION OVER THE SUBJECT MATTER IF RESPONDENT, USF&G, DID NOT HAVE A WRITTEN CONTRACT UNDER THE LAWS OF THE STATE OF NEVADA?

USF&G has no written policy contract with Petitioner. USF&G was required to have a written "policy" contract in accordance with NRS 679A.112, which specifically defines the term "policy," to wit:

> "'Policy' means the the written contract of or written agreement for or effecting insurance, by whatever name called, and includes all clauses, riders, endorsements, and papers which are a part thereof." (emphasis added)

NRS 680A.070(1), Apdx. 40-42, clearly indicates that a written policy is required for the Respondent to litigate a case in the State of Nevada:

> "A certificate of authority [from the insurance commissioner] is not required of an insurer with respect to any of the following:
> (1) Investigation, settlement, or litigation of claims under its policies lawfully written in the State . . ."

Federal Rules of Evidence 1008 specifically states that the *"issue . . .raised . . . whether the asserted writing ever existed . . . is for the trier of fact."* Neither the U.S. District Court or Ninth Circuit Court of Appeals determined whether USF&G, a foreign insurance corporation, was required to have a "written" policy in accordance with NRS 679A.112 and NRS 680A.070(1).

USF&G continually plead that Robert Kahre had breached the contract with USF&G, and by affidavit, claimed specific provisions of a contract to which Robert Kahre was not a signatory party. *See* Original Complaint, Apdx. 56-60.

*Also See* (Apdx. 68-72); (Apdx. 73-76); (CR#31). Kahre and USF&G both know that there is no written policy between himself and USF&G, and Kahre has continually objected to this unfounded assertion of the existence of a written policy, a material fact in issue. (Apdx. 64, ¶ 3; and CR#37, pp. 7 - 8). Kahre also knows that the several pleadings and affidavits were false and untrue on their face, but never received opportunity to challenge said affidavits as he was never served with USF&G's application for default judgment, and was never afforded the proper remedies available under FRCP Rule 55. Apdx. 53-55, as annexed to Appeal Reply brief.

The State of Nevada has a compelling interest in the "fair and uniform business practices" of USF&G while it is engaged in business in the State. *Union Brokerage Co. v. Jensen*, 88 L.Ed. 1227 1231. The substantive statutory laws of the State prevail in this issue. *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938); *Hanna v. Plumer*, 380 U.S. 460 (1965). An insurance "policy" is clearly defined by the laws of the State of Nevada. NRS 679A.112. There is, however, no written policy between Kahre and USF&G.

FRE 1008 specifically states that the: *"issue . . .raised . . . whether the asserted writing ever existed . . . is for the trier of fact."* The lower Courts failed to determine whether USF&G was required to have a "written" policy in accordance with NRS 679A.112 and NRS 680A.070(1) or whether such written policy even existed:

Whether any such written "policy" existed upon which USF&G's claim was raised by Kahre. USF&G not only violated the requirements of State law concerning proper registration with the office of the Secretary of State, it does not have a written policy upon which it can commence and maintain an action.

The issue also applies to the default judgment.

FRCP Rule 55(b)(2) directs in pertinent part that:

> "If, in order to enable the court to enter enter judgment, or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearing or order such references as it deems necessary and proper and shall accord a right to trial by jury to the parties when and as required by any statute of the United States." (emphasis added)

The term "may", when pertaining to an obligation or duty, has the same meaning as the term "shall." Robert Kahre continually denied that USF&G's "policy" existed. No hearings were ever held in the U.S. District Court, and no determination was made concerning the disputed factual allegations of USF&G's "written policy."

The lower Courts upheld the unsubstantiated contractual "policy" claims of USF&G in contravention of NRS 679A.112, 28 U.S.C. 1652, and FRE 1008. The Order and Judgment of July 20, 1998 (Apdx. 10-11) are in contravention of the Constitution and statutory laws of the State of Nevada, and 28 U.S.C. 1652. USF&G lacked standing to commence and maintain the action, and further, did not have the required written policy upon which to sue.

The Ninth Circuit Court of Appeals affirmed the judgment entered in the U.S. District Court without applying the laws of the State of Nevada, without evidence on the record, and condoned a substantial departure from judicial proceedings under FRCP.

## ISSUE III.

IS THE TRIAL COURT REQUIRED TO DETERMINE THE DIFFERENCE IN VALUES BETWEEN THE GOLD AND SILVER COIN MINTED PURSUANT TO THE CONSTITUTION FOR THE UNITED STATES OF AMERICA AND 31 U.S.C. 5112, AND OTHER MEDIUMS OF EXCHANGE, AND IF SO, WHAT STANDARDS ARE THE COURTS REQUIRED TO APPLY IN CASES OF CONTRACTS, DAMAGES, OTHER JUDGMENTS, OR FEES WHERE THE DIFFERENT MEDIUMS OF EXCHANGE AND THEIR VALUES ARE IN ISSUE?

31 USC 5112(h) and 5103 state that the Constitutional gold and silver Coins used by Kahre, and at issue in this case, are legal tender at face value. Apdx. 22, 26. USF&G has claimed differing amounts and valuations as to their purported damages throughout the case. The lower Courts acknowledged said gold and silver Coins as legal tender and accepted said Constitutional coins at face value. Apdx. 49-52. These same Coins, also used to pay this supreme Court, are what Kahre used to pay those with whom he contracted.

The lower Court has rendered judgment in favor of USF&G based on valuation of said coins at the market price of bullion, contrary to the will of Congress and statute. USF&G has admitted that Kahre paid those who contracted with him in the Constitutional Coin, and that he valued it, as payroll, legal tender, in accordance with the value Congress gave it at 31 U.S.C. 5112(h) and 5103:

> "As set forth to the Court in prior Response and Motion, this matter arises out of a complaint for

> breach of contract, accounting and attorney's fees wherein UNITED STATES FIDELITY AND GUARANTY COMPANY [hereinafter "USF&G"] audited the insurance policy premiums of Defendant Robert Kahre [hereinafter "KAHRE"], and determined that Defendant owed Plaintiff an *additional 54.717 for coverage provided*. *The action for the additional premiums has been necessary because KAHRE paid his employees in silver Coin upon which he placed a value of $1.00 for the purpose of calculating the premium, whereas the value of the coins is 5.11 when converted to Federal Reserve Notes."* (emphasis added), ("Plaintiff's Response. . .", CR#9, page 1, line 27 - page 2, line 10).

U.S. District Court, Lloyd D. George, III, abused discretion by his refusal to take into cognizance the material differences stated in USF&G'S own pleadings, the objections of Kahre, and the district courts own policy of accepting and valuing said coins at face value while determining the amount of the judgment in issue. A double and probable triple standard has been applied in this case to the prejudice of Kahre and in violation of the *Constitution for the United States of America*, Article I, Section 8, Clause 5 and Article I, Section 10, Clause 1. The State, including the State Courts, are not authorized to directly or indirectly make any thing but gold and silver Coin a payment in tender of debts.

USF&G was fully aware that Robert Kahre dealt in gold and silver Coin, minted by the U.S. Mint, in accordance with the *Constitution for the United States of America*, Article I, Section 8, Clause 5, and Article I, Section 10, Clause 1, and the Laws made in Pursuance thereof. Apdx. 53-55; 31 U.S.C. 5112. USF&G, by and through its attorneys, claims that

Kahre's dollars, gold and silver Coin are not the same value as USF&G's dollars, Federal Reserve Notes and debased coinage.

USF&G, by and through its lawyers, William C. Travis and Brian P. Worthington, and through Helen Forbis and Jerry Landsman, Jr., plead the difference in value. First they claimed it was 5.11. *See* inset, supra ("Plaintiff's Response. . .", CR#9, page 2, lines 5- 10). USF&G then plead the "value" to be 5.456 Federal Reserve Notes per dollar, silver Coin, or perhaps 5.224 per dollar, silver coin. Apdx. 73-76, ¶¶ 3, 5, and 6. USF&G has also claimed total damage amounts that vary from 54,717 ("Plaintiff's Response. . .", CR#9, page 1, line 27 - page 2, line 10, inset, supra) to $75,759.52:

> "Therefore, on March 28, 1997, the Clerk entered a default against Kahre on USF&G's request. (A copy of the Default is attached hereto as Exhibit 3.) *Through this Motion, USF&G requests the Court enter a Default Judgment in the amount of $75,759.52 against Kahre for the additional premiums owed.*" (Memorandum of Points and Authorities in Support of Application for Default Judgment, CR # 31, page 4, lines 22-25). (emphasis added)

The exchange value attached to the silver Coin by USF&G and the lower Court was not the value given to it by Congress, nor was it the value recognized by this supreme Court and the USDC, who accepted the Coins as legal tender at face value. The market value claimed by USF&G was the silver bullion price set by the English commodity market, not the value set by Congress and recognized by both State and Federal courts.

Only Congress was delegated the power to regulate the value of Coin in the United States of America. *Constitution for the United States of America*, Article I, Section 8, Clause 5. In the exercise of that power, Congress declared the value of the Constitutional Coin, which is codified at 31 U.S.C. 5112(h).

The diverse weights and measures used by USF&G, and as affirmed by the lower Courts, is patently unconstitutional. To claim in one instance that the value of the Constitutional Coin is only the cost of bullion at a floating exchange rate which they cannot even arrive at a single value for, and in the next instant have the U.S. District Court take the Coin at a one-for-one face value with the SDR-Federal Reserve Note, is the epitome of fraud and "cheating." Apdx. 49-52.

In the determination of *Trostel v. American Life & Casualty Insurance Co.*, 93 F.3d 736 (1996), the 8th Circuit Court of Appeals determined that contracts in gold coin were valid and enforceable, however, the difference in value had to be determined by the trial court and they remanded the case. Needless to say, there is a public interest in the value of money. With that interest is a reciprocal obligation to maintain the value of the Constitutional "Coin" for the operations of government and the convenience of honest commerce. (*U.S. v. Marigold*, 13 L.Ed. 257, 260, 261 (1848)). USF&G and its attorneys are claiming benefit of an unconstitutional systematic scheme.

As stated by Congressman Crane, the Coins used by Kahre and at issue in this case were intended by Congress to be used as a constitutional alternative to the defacto international paper credit Federal Reserve Note-SDR system, which is exactly what Petitioner is doing. Apdx. 43-44.

The fact that USF&G conducts its business in

international credit and "Federal Reserve Notes" is admitted. ("Plaintiff's Response . . .", CR#9, page 2, lines 5 - 10, inset supra). The Federal Reserve Note is valued in the International Monetary Fund's Special Drawing Rights, not in dollars, gold and silver Coin. Apdx. 44. Congress does not regulate the value of SDRs nor USF&G's Federal Reserve Notes. (Apdx. 46). The Constitution, law, and intent of Congress concerning gold and silver Coin and USF&G's "de facto" floating paper and credit system were presented to the Courts below.

> "Moving to a floating exchange rate for international commerce means that private enterprise and not central governments bear the risk of currency fluctuations." (CR#37, Exhibit 17, Public Law 94-564, Senate Report 94-1148, pg. 5944).

USF&G has submitted affidavits which claim that their international paper and credit is not the same value as Petitioner, Robert Kahre's gold and silver Coin. The Coin was minted under authority of the *Constitution for the United States of America*, Article I, Section 8, Clause 5, and the Laws made in Pursuance thereof. 31 U.S.C. 5112. USF&G and its attorneys knew that they bore the risk of value fluctuations. USF&G, by and through its attorneys, are attempting to pass the loss and risk off on others in contravention of Congressional policy.

Such acts have been traditionally held to be fraudulent. *Westfall v. Braley*, 10 Ohio 188, 75 Am. Dec. 509. As stated before, the Constitution of the United States does not secure to anyone the privilege of defrauding the public. *Eaton v. Iowa*, 188 U.S. 452, 454 (1903). U.S. District Court, Lloyd D. George, III, was also fully aware that fraud

is not a judicial function. *Yates vs. Village of Hoffman Estates, Ill*, 209 F.Supp.757 (1962).

On July 20, 1998, Lloyd D. George, III, entered a Judgment against Robert Kahre in the sum of $75,759.52 Federal Reserve Notes (Apdx. 11), as specifically stated in the Application for Default Judgment and Declaration of Brian P. Worthington in support of said application. (CR# 31, p. 65, lines 15 - 16; p. 70, line 15 - 16). The judgment sum not only exceeded the amount claimed in USF&G's original complaint, it made some "Thing" other than "gold and silver Coin a Payment in Tender of Debt" in direct and intentional violation of the *Constitution for the United States of America*, Article I, Section 10, Clause 1. The Judgment also assigned a value to the Coins contrary to that intended by Congress; legal tender at face value. Lloyd D. George knowingly, willingly, and purposefully ignored the obvious facts in dispute regarding the amount USF&G had claimed as a damage, he refused to take an account or determine the actual amount of damages. *See* FRCP Rule 55(b)(2). No hearings were ever held in the U.S. District Court on the disputed issue of value, no accounting was taken, no damages were properly determined, no reasonable investigation was made, no hearing was had, and no references ordered.

The difference in value between the Special Drawing Right-Federal Reserve Note and debased coinage system used by USF&G, and the Constitutional gold and silver Coins used by Robert Kahre is in issue and has not been resolved. The U.S. District Court was required to determine the value and refused. *Trostel v. American Life & Casualty Insurance Co.*, 93 F.3d 736 (1996).

The Ninth Circuit Court of Appeals affirmed the lower Court judgment and refused to remand the case for further proceedings on the issues presented. The Order and

Judgment as they stand are in direct contravention of the Constitution for the United States of America, existing statutory law, the intent of Congress and the determination of other Circuit Courts on the same or similar issues.

## ISSUE IV

IS THE COURT REQUIRED TO ABIDE BY FRCP RULE 55, AND WAS IT AN ABUSE OF DISCRETION FOR THE COURT (1) TO GRANT DEFAULT JUDGMENT WHEN KAHRE WAS NOT SERVED WITH USF&G'S APPLICATION FOR DEFAULT JUDGMENT AND WAS ENJOINED BY THE COURT FROM ANSWERING; AND (2) TO GRANT DEFAULT JUDGMENT WITHOUT HEARING OR TRIAL TO ASSESS DAMAGES, WHEN THE AMOUNT OF DAMAGES WAS NOT CERTAIN, MATERIAL FACTS WERE IN DISPUTE, AND USF&G PLEAD THREE DIFFERENT AMOUNTS OF DAMAGE?

### A. GRANTING DEFAULT JUDGMENT WITHOUT NOTICE. NO TRIAL BY JURY.

U.S. District Court, Lloyd D. George, abused discretion by failing to abide by FRCP Rule 55(b)(2) and by granting default judgment when Kahre had not received notice, and was enjoined by the Court from filing an answer.

Trial by jury was demanded in accordance with the *Constitution for the United States of America*, Amendment VII, as a matter of secured right. The value in controversy exceeds twenty (20) dollars. F.R.C.P. Rule 55(b)(2) requires that Kahre be accorded a right of trial by jury when and as required by any statute of the United States. Kahre was afforded no such right by the lower Courts.

On or about July 23, 1998 Kahre received, via first class mail, an Order and Judgment signed by Lloyd D.

George, III. (Apdx. 10-11). Said Judgment was in the sum of $75,759.52 and against Kahre, and apparently entered under F.R.C.P. Rule 55(b)(2). F.R.C.P. Rule 55(b)(2) states:

> (2) *By the Court.* . . . If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application. . . . and shall accord a right of trial by jury to the parties when and as required by any statute of the United States.

Kahre had already appeared in this action. F.R.C.P. Rule 55(b)(2) requires that Kahre should have been served with written notice of the application for judgment at least 3 days prior to the hearing on such application. Kahre received no documents whatsoever pertaining to the above-referenced Application for Default Judgment.

The Ninth Circuit Court, in its Order of November 18, 1999 (Apdx. 1-2) affirming the District Court's decision, misapplied *Alan Neuman Products Inc. v. Albright*, 862 F.2d 1388, 1391 (9th Cir. 1980), and *Meadows v. Dominican Republic*, 817 F.2d 517, 521 (9th Cir. 1987). The court claimed that since Kahre "refused" to answer the complaint, his motion to vacate the judgment should be denied. Firstly, Kahre was enjoined from filing any pleadings without leave of court, which occurred well before any default was ever filed by USF&G.

"Kahre is enjoined from filing any further pleadings in

this action without prior permission from the court." Apdx. 8.

The Court never gave leave for Kahre to file an answer, which is a pleading pursuant to FRCP Rule 12. Kahre's conduct was not "culpable"; he was prevented by the Court from filing an answer.

Secondly, the cases cited by the Ninth Circuit are inapposite. In *Alan,* supra at 1390, the party against whom default was sought did not even appear until after default was entered, and in the *Meadows* case at 520, supra, the the party against whom default was sought did not even appear until after default judgment was entered. In contrast, Kahre had been filing documents in the instant case for over a year. Secondly, In *Alan*, supra, at 1390, the party moving for default made their intentions clear by writing the defaultee's a letter warning them that they would take default if no answer were filed. Kahre, in contrast, never received USF&G's application for default judgment, and received no warning as the parties in *Alan* did; not even a phone call.

It has been held an abuse of discretion to fail to set aside default judgment where the defendant never received Notice. *See Canal Insurance Company v. Dale Ashmore*, 61 F.3d 15 (8th Cir. 1995); also *D.B. v. Bloom*, 896 F. Supp. 166 (D.N.J. 1995).

The Ninth Circuit Court of Appeals sanctioned extreme departure from the usual course of judicial proceedings (FRCP Rule 55), affirmed a conflict with determinations of other Circuit Courts on the same or similar issues, and misread and misapplied standards from *Alan* and *Meadows* which do not apply to the fact of this case.

## B. GRANTING DEFAULT JUDGMENT WITHOUT HEARING OR TRIAL WHEN AMOUNTS ARE UNCERTAIN, MATERIAL FACTS ARE IN DISPUTE, AND USF&G PLEAD THREE DIFFERENT AMOUNTS OF DAMAGE

USF&G claimed numerous amounts as damages throughout the case which varied as much as 21,042.52. The amounts ranged from 68,484, in the original complaint (Apdx. 60), to 54,717.00 in "Plaintiff USF&G Company's Opposition To Defendants Motion To Dismiss Complaint And Counter Motion For Rule 11 Sanctions" (CR#4, p. 12 line 27 - p. 13, line 5). Then, on application for default judgment, USF&G's attorney, Bryan P. Worthington claimed 75,759.52. There is a difference of 21,042.52 in USF&G's own pleadings. These conditions clearly require the court to conduct the hearing and investigation defined under FRCP Rule 55(b)(2), but the USDC did no such thing, and the the Circuit Court condoned this aberrant practice.

Kahre had already appeared in the action, and never received service of the Application for Default Judgment. No hearings were ever held in the U.S. District Court on the disputed issue of value, no accounting was taken, no written policy was produced, no damages were properly determined, no reasonable investigation was made, and no references ordered.

The Ninth Circuit Court, in its Order of November 18, 1999, cited *Meadows* and the alleged "culpable conduct" standard as its excuse for not considering the value of the coins or that no contract existed. In *Meadows*, however, the defaulting party did not appear until after default judgment, whereas Kahre had already appeared and was actively litigating and defending his case. In Addition, Kahre's conduct was not culpable, as he received no warning from the

party moving for default (USF&G) as the party did in *Alan*, supra, and also was enjoined from filing any pleading without leave of court, which includes an answer. The Ninth Circuit's opinion conflicts with its own holdings.

The party entitled to default bears the burden of proving the amount of damages to be awarded. *Oberstar v. FDIC*, 987 F.2d 494, 505 n. 9 (8th Cir. 1993). USF&G has failed to prove the amount of damages, and is clearly uncertain as to the amount of damages. Unless the amount of damages is certain, the court is required to make independent determination of the sum to be awarded. *Wing v. East River Chinese Restaurant*, 884 F.Supp 663, 669 (E.D.N.Y. 1995). In this case, the court failed to make such a determination, and failed to conduct the investigation required under FRCP Rule 55(b)(2). Furthermore, the USDC used a value in determining the judgment (an exchange rate with SDR-Federal Reserve Notes) while it accepted the Coins in issue at face value for its own filing fees. How can the Courts so easily apply a double-standard without even a tinge of conscience?

The Ninth Circuit Court refused to address the issues presented concerning FRCP Rule 55, i.e., requiring a hearing to determine the amount of damages and facts clearly in dispute; and, affirmed a conflict with the determinations of other Circuit Courts on the same or similar issues, while misreading and misapplying standards from *Alan* and *Meadows* which do not apply to the facts of this case.

## ISSUE V

CAN A NON-ARTICLE III ADJUDICATOR IN THE FEDERAL COURT SYSTEM SIT IN AN ARTICLE III, SECTION 2, DIVERSITY SUIT, AND IF NOT, ARE THE ORDERS AND JUDGMENTS OF A NON-ARTICLE III ADJUDICATOR VOID FOR WANT OF AUTHORITY?

As specifically recognized by Congress, Kahre has a "paramount right" to a lawful Article III judge. (Public Law 101-650, Senate Report No. 101-416, Congressional & Administrative News, pg. 6873). Retired U.S. District Court judge, Lloyd D. George's compensation was diminished under 28 USC § 371(b) & (f). (Apdx. 18). The compensation of lower court judges George and McKibben have also been diminished by taxation, and by the international credit system currently in place. Neither Lloyd D. George nor Howard McKibben met the express qualifications of Article III, Section 1, judges and were unauthorized to sit in the instant case. The Orders and judgments of Lloyd D. George, and Howard McKibben are void as a matter of the law of the land. *U.S. v. Woodly*, 726 F.2d 1328 (9th Cir. 1984).

28 U.S.C. 371(b) also refers to subsection (f). Subsection (f)(1) directs that:

> "in order to continue receiving the salary of the office under subsection (b), a justice must be certified in each calendar year by the Chief Justice, and a judge must be certified by the chief judge of the circuit in which the judge sits, as having met the requirements set forth in at least one of the following subparagraphs." (emphasis added)

**DIMINUTION THROUGH TAXATION**

Inferior U.S. District Court judges Lloyd D. George, III, and Howard McKibben's compensation is diminished by taxation under the Public Salaries Tax Act of 1939, 76th Congress, 1st Session, Chapter 59, Section 209. Subsequent judicial salaries Acts recognized the imposition and diminution of compensation of judges. The effects of these

Congressional enactments were clearly stated in Public Law 567, 79th Congress, 2d Session, Chapter 704, Senate Report No. 1631, June 28, 1946:

> "In conclusion, it should be borne in mind that the salaries of all Federal judges are now subject to the internal-revenue laws with the resulting diminution in net salaries received." (CR#37, Exhibit 37).

The supreme Court specifically dealt with the Constitutional diminution clause and taxation of an Article III judge's compensation in *O'Donohue v. U.S.*, 77 L.Ed. 1356 (1933). The supreme Court went further than just diminution by taxation:

> "Obviously, diminution may be effected in more ways than one. Some may be direct and others indirect, or even evasive as Mr. Hamilton suggested. But all which by their necessary operation and effect withhold or take from the judge a part of that which has been promised by law for his services must be regarded as within the prohibition. Nothing short of this will give full effect to its spirit and principle." (77 L.Ed. at 1362)

**DIMINUTION THROUGH THE INTERNATIONAL PAPER AND CREDIT SYSTEM**

28 U.S.C. 461, Apdx. 20, is the statutory provision to make adjustments in salary because of the depreciating value of the medium which Lloyd D. George, III, is compensated for his services in. *Atkins, et al. v. U.S.*, 556 F.2d 1028 (1977), cert. denied, 434 US 1009, 54 L.Ed.2d 751.

28 U.S.C. 461 directly refers to 5 U.S.C. 5303, which in turn directs that the President determines the appropriateness of any pay raises. In fact, no pay adjustments under 5 USC § 5303 were made in 1997 whatsoever. P.L. 104-208, Div. A, Title I, § 101(f) [Title VI, § 637], Sept. 30, 1996, 110 Stat. 3009 - 3064, provided that:

> "For the purposes of each provision of law amended by section 704(a)(2) of the Ethics Reform Act of 1989 [. . . citations omitted . . ], no adjustment under section 5303 of title 5, United States Code [this section], shall be considered to have taken effect in fiscal year 1997 in the rates of basic pay for the statutory pay systems." (emphasis added)

In the *Atkins* case, the diminution of the compensation of forty-four (44) U.S. District and Appellate Court judges was raised. The judges, commenced the action in the Court of Claims. (U.S. Court of Claims, CR# 41-76, Filed February 11, 1976).

The "value of money" was meant to be "Coin", made of the metals of gold and silver". *Atkins et al. v. U.S.*, 556 F.2d 1047. The system that the 44 complaining judges were paid in is the same as the one that Respondent USF&G uses. As plead and repeatedly evidenced by Kahre, the paper and credit "dollar" is evaluated in the IMF's Special Drawing Rights, not in the Constitutional gold and silver Coin. (Apdx. 47). On appeal from the Court of Claims, the Appellate Court in the Federal Circuit, Washington, DC, came to the conclusion that there were "heinous" violations of the Constitution, however, they were not going to afford any remedy "until all of us [judges] are dead." (556 F.2d 1074).

The judges knew that the Acts that created the condition of diminution were unconstitutional and unlawful. The *Atkins* court concluded in pertinent part that:

> "I could not, therefore, jurisdictional questions aside, have joined in holding Article III is unviolated up to now." (556 F.2d 1074)

Both the bent of mind and continued breach of obligation was shown in the ruling.

> "To me it seems absurd for a court having such limited jurisdiction to invoke a 'doctrine of necessity,' saying we must override an unambiguous statutory bar because if we do not, the poor fellows have no remedy. If they have none, then they only join a club that has many other members." (556 F.2d 1072)

Diminution of compensation was considered by the supreme Court in the case of *U.S. v. Wills*, 66 L.Ed.2d 392, 405 (1980). Disqualification of the judges was also considered by the this Court under 28 U.S.C. 455, (*U.S. v. Wills*, 66 L.Ed.2d 404). The supreme Court could only hear the case under "rule of necessity." (66 L.Ed.2d 405, 406) Since necessity has no law, there was no one left that was qualified to sit under Article III and 28 U.S.C. 455. It is reiterated again that Robert Kahre did not and does not waive the "paramount right" to a lawful, impartial, Constitutional, Article III judicial power judge.

**DIMINUTION BY SOCIAL SECURITY**

The judges compensation is also diminished by exaction for the international social security. (42 USC 433).

In *Hatter, et al. vs. U.S.*, U.S. Court of Claims, Case No. 705–89–C (1990), several U.S. District Court judges participated in and filed suit in the U.S. Court of Claims upon grounds of diminution of compensation under the amendments to the Social Security system, and the international agreements pertaining thereto. It was determined that none of the judges that sued in *Hatter, et al. vs. U.S.* were Article III judges. (*Hatter, et al. vs. U.S.*, U.S. Court Of Appeals for the Federal Circuit, Case No. 91–5039, Decision, January 16, 1992, pg. 2, footnote).

The Acts and systematic schemes that created this condition are patently unconstitutional, and violate the "paramount right" of litigants to have a lawful, impartial, Constitutional, Article III judge preside in their case. The "paramount right" of Robert Kahre to a lawful, Constitutional, Article III, Section 1 judge is in issue.

The Ninth Circuit Court of Appeals decided that the issue presented was without merit. The determination is in conflict with the rulings of other Circuit Courts and the determinations of this Supreme Court.

**ISSUE VI.**

DID THE LOWER COURTS APPLY THE WRONG STANDARDS FOR RECUSAL OF A JUDGE UNDER 28 U.S.C. 455?

28 U.S.C. 455(a) & (b) mandate that a judge or magistrate *"shall disqualify himself"* "in any proceeding in which his impartiality might reasonably be questioned." *Liteky v. U.S., 127 L.Ed. 474*, 486 (1994). Retired U.S. District Court judge, Lloyd D. George, III's favoritism and antagonism antedates the instant case. Lloyd George was disqualified upon grounds that George was a party to

litigation in which Kahre was an adverse party, along with other matters concerning usurpation of authority and several breaches of public trust. Apdx. 7, fn 1. Lloyd D. George, III, was required to "recuse himself" under 28 U.S.C. 455, and refused. Consideration of recusal under 28 U.S.C. 455 was also addressed in the *Atkins* case. (556 F.2d 1035 - 1040). All the judges had a financial and credibility interest in the outcome of the case. All parties had to waive the requirements of recusal under 28 U.S.C. 455. Kahre has not consented to or waived any provision of 28 U.S.C. 455, including but not limited to, section 455(e).

Kahre has a reasonable expectation that any judge sitting in a case would act within the parameters and standards of the Code of Ethics for Government Service Public Law 96–303, 94 Stat. 855, Apdx. 46.

In the first instant, both 28 U.S.C. 455(a) & (b) mandate that a judge or magistrate *"shall disqualify himself"* in any proceeding in which his impartiality might reasonably be questioned." *Liteky v. U.S., 127 L.Ed. 474*, 486 (1994). Lloyd D. George, III, was well aware of the issues and requirements of the recusal law. The issue of impartiality is determined under the "objective standard", rather than the subjective standard. "The issue of disqualification is a sensitive question of assessing all the facts and circumstances in order to determine whether the failure to disqualify was an abuse of sound judicial discretion." *28 U.S.C. 455(a) "sets up a more objective standard than* the existing statute where *the judge's own opinion* is the deciding standard." (Public Law 93-512, House Report 93-1453, emphasis added).

The Ninth Circuit Court of Appeals improperly applied the subjective standard to the issue of recusal. Apdx. 2. The Ninth Circuit specifically applied the "extrajudicial source" standards in conflict with existing law and the

determination of this Court in *Liteky v. U.S., 127 L.Ed. 474*, 486 (1994).

## CONCLUSION

The Ninth Circuit Court's determination of the issues presented on appeal is in conflict with the determinations of other Circuit Courts, with the rulings of this supreme Court, and is in contravention of the Constitution and laws of the State of Nevada, the Constitution for the United States of America, the laws made in pursuance thereof, and the intent of Congress, and represents extreme departures from the accepted and usual course of judicial proceedings, and the sanctioning of such departures in the lower court. Petitioner respectfully requests this court grant Certiorari to review the issues presented herein.

DATED this 4th day of May, 2000.

Respectfully submitted by Petitioner Robert Kahre, herein.

/s/_____

Robert Kahre
6049 Boulder Highway
Las Vegas, Nevada 89122

# APPENDIX

# TO PETITION

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APPLICATION FOR DEFAULT
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**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

NOV 18 1999

CATHY A. CATTERSON

CLERK, U.S. COURT OF APPEALS

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| UNITED STATES FIDELITY & GUARANTY CO., | ) | No. 99-15018 |
| | ) | D.C. No. CV-96-00742-LDG/RJJ |
| Plaintiff-Appellee, | ) | |
| v. | ) | MEMORANDUM[1] |
| ROBERT KAHRE, | ) | |
| Defendant-Appellant. | ) | |

Appeal from the United States District Court
for the District of Nevada
Lloyd D. George, District Judge, Presiding

Submitted November 15, 1999[2]

Before: WALLACE, FARRIS, and T.G. NELSON, Circuit Judges.

Robert Kahre appeals pro se the district court's

[1] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by 9th Cir. R. 36-3.

[2] The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

default judgment against him in United States Fidelity & Guaranty Co.'s ("USF&G") diversity action alleging that Kahre underpaid his insurance premiums. We have jurisdiction under 28

(end of page 1)

U.S.C. § 1291. We review for abuse of discretion, *see Alan Neuman Prods., Inc. v. Albright,* 862 F.2d 1388, 1391 (9th Cir. 1989), and we affirm.

Because Kahre acted culpably by refusing to answer the complaint, the district court did not abuse its discretion by entering default judgment or denying Kahre's motion to vacate judgment. *See id.* at 1391-92. Furthermore, because of Kahre's culpable conduct, we need not consider his contentions regarding the value of coins or that no contract existed. *See Meadows v. Dominican Republic,* 817 F.2d 517, 521 (9th Cir. 1987).

Kahre's contention that USF&G did not have standing to bring this action lacks merit because USF&G had a certificate of authority to do business in Nevada. *See* Nev. Rev. Stat. § 680A.070(3).

Because Kahre did not meet his burden of showing that Judge George was biased against Kahre from an extrajudicial source, the district court did not err by refusing to recuse itself. *See United States v. Sibla,* 624 F.2d 864, 868 (9th Cir. 1980).

Finally, Kahre's contention that Judge George was not an Article III judge lacks merit.

**AFFIRMED.**

(end of page 2)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
FEB -9 2000
CATHY A. CATTERSON
CLERK, U.S. COURT OF APPEALS

| | | |
|---|---|---|
| UNITED STATES FIDELITY & GUARANTY CO., | ) | No. 99-15018 |
| | ) | D.C. No. CV-96-00742-LDG/RJJ |
| Plaintiff-Appellee, | ) | District of Nevada |
| v. | ) | |
| | ) | ORDER |
| ROBERT KAHRE, | ) | |
| | ) | |
| Defendant-Appellant. | ) | |
| | ) | |

Before: WALLACE, FARRIS, and T.G. NELSON, Circuit Judges.

Appellant's petition for panel rehearing is denied.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

FILED
FEB 28 2000
CLERK, U.S. DISTRICT COURT
DISTRICT OF NEVADA

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| UNITED STATES OF AMERICA, | ) | Case No. CV-S-96-742-LDG(RJJ) |
| Plaintiff-Appellant, | ) | C/A No. 99-15018 |
| v. | ) | |
| ROBERT KAHRE, | ) | |
| Defendant-Appellant. | ) | |

ORDER ON MANDATE

The above-entitled cause having been before the United States Court of Appeals for the Ninth Circuit, and the Court of Appeals having on November 18, 1999, issued its mandate AFFIRMING the District Court Judgment and the court being fully advised in the premises, NOW, THEREFORE,

IT IS ORDERED that the mandate be spread upon the records of this Court.

Dated this 24 day of FEB, 2000.

/s/ Lloyd D. George
LLOYD D. GEORGE,
U.S. DISTRICT JUDGE

ENTERED AND SERVED
JAN 7, 1998
CLERK, U.S. DISTRICT COURT
DISTRICT OF NEVADA
By /s/ ?DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

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| UNITED STATES FIDELITY & GUARANTY COMPANY,<br><br>Plaintiff,<br><br>v.<br><br>ROBERT KAHRE AND DOES I - X INCLUSIVE<br><br>Defendant/Petitioner,<br><br>v.<br><br>HOWARD D. MCKIBBEN,<br><br>Respondent. | CV-S-96-742-LDG/RJJ<br><br>ORDER |

On March 14, 1997, Defendant Robert Kahre filed pro se what he entitled "Writ of Praecipe Order to Show Cause in the Original in the Alternative" (#13, the "Writ") which named Judge Howard McKibben as a "respondent." The United States of America (the "Government"), on behalf

of Judge McKibben, moved to strike the Writ pursuant to Rule 12(f) of the Federal Rules of Civil Procedure (#21). Plaintiff, United States Fidelity & Guaranty Company ("USF&G") also moved to strike and moved for sanction under Rule 11 of the Federal Rules of Civil Procedures (#16).

**MOTION TO STRIKE**

Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1990)*. Nevertheless, even a pro se pleading may be stricken under Rule 12(f) if it is "redundant, immaterial, impertinent, or scandalous . . . ."

(end of page 1)

The Writ filed by Kahre is intelligible. The Writ contains disjointed and unsupported attacks on the character of the court and the other attorneys involved in this case. The Writ contains citations to the law but these citations are unrelated to any statements made in the Writ.

Kahre apparently filed the Writ because Judge McKibben ruled adversely upon Kahre's motions. Judge McKibben denied Kahre's motion to dismiss the complaint filed by USF&G and ruled that the motion was without foundation. Judge McKibben warned that if similar pleadings were filed without foundation then Rule 11 sanctions would be forthcoming. Kahre, however, ignored Judge McKibben's warning and moved to reconsider the court's order on the same grounds. Judge McKibben denied Kahre's motion to reconsider, found the motion was also without foundation and frivolous, and imposed sanctions on Kahre in the amount of $350.00. Kahre thereafter filed the Writ which apparently requests another reconsideration of Kahre's already twice denied motion to dismiss, that all previous orders and

determinations be vacated, that attorney for USF&G be disbarred and prosecuted, and that those which were involved in a previously unsuccessful action by Kahre, *State of Nevada Ex Rel., Robert Kahre v. The International Monetary Fund et al.*, CV-S-94-1009-LDG-(RJJ), also be criminally prosecuted.[1]

Kahre offers no basis for the relief requested and this Court finds that none exists. By repeatedly filing pleadings that assert issues which have been been deemed to be frivolous, Kahre indicates his intent to waste scarce judicial resources. As the Writ was filed for the purpose

(end of page 2)

of harassment and abuse of the courts, the Writ shall be stricken pursuant to Rule 12(f) as being redundant, immaterial, impertinent, and scandalous.

**SANCTIONS**

Sanctions under Rule 11 are warranted. Even though Kahre has already been sanctioned for pressing a second time issues already ruled to be without foundation, Kahre seeks to

[1] The present judge was involved in the International Monetary Fund case and is one of the parties Mr. Kahre expressly claims should be prosecuted. As Mr. Kahre is seeking to prosecute the present judge, the issue of recusal needs to he raised. Recusal, however, is not justified. Mr. Kahre has a history of suing judges whenever he is subject to an adverse decision. In the Writ, Mr. Kahre is seeking the prosecution of four separate federal judges in this district. By naming judges in his lawsuit, Mr. Kahre is simply attempting to delay and frustrate the orderly administration of justice. If judges could be held hostage by this kind of tactic, any litigant could avoid an adverse decision simply by naming the judge as part of the lawsuit. Even if the case were transferred to another judge, based upon Mr. Kahre's past history, there is every expectation that the new judge's name would be added to Kahre's list of persons who should be prosecuted. In light of Mr. Kahre' s tactics, no reasonable person would question a judge's impartiality in this matter and recusal therefore is not warranted.

reassert these same issues for a third time. Kahre's conduct demonstrates that he will not be deterred from filing frivolous pleadings unless greater monetary sanction are imposed. Kahre shall therefore pay to USF&G its attorney's fees in the amount $1000.00.

Additionally, in the Writ, Kahre is apparently attempting to again raise arguments that were disposed of when the aforementioned *International Monetary Fund* case was dismissed with prejudice. In that case, Kahre also repeatedly attempted to resurrect the same frivolous arguments. The Court finally found it necessary to enjoin Kahre from filing further documents in that action without leave of the Court. As Kahre appears to be unwilling to control his filings in this action also, Kahre shall be enjoined from filing any pleading in this cause of action without first obtaining leave of the Court. Accordingly,

IT IS **ORDERED** that United States of America's and USF&G's motions to strike (#21 and #16 respectively) the Writ of Praecipe Order to Show Cause in the Original in the Alternative (#13) is GRANTED.

IT IS FURTHER **ORDERED** that sanctions in the amount of one thousand dollars ($1000.00) are imposed against Robert Kahre and said sum shall be paid to Plaintiff USF&G with twenty (20) days from the date this order is entered.

IT IS FURTHER **ORDERED** that Robert Kahre is enjoined from filing any further pleadings in this action without prior permission from the court.

(end of page 3)

IT IS FURTHER **ORDERED** that the clerk of the court shall submit any and all further filings by Robert Kahre for review by the assigned judge prior to accepting documents for filing.

DATED this 31 day of December, 1997.

/s/ Lloyd D. George
Lloyd D. George
United States District Judge

ENTERED AND SERVED
JUL 20, 1998
CLERK, U.S. DISTRICT COURT
DISTRICT OF NEVADA
By /s/ ?DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

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| UNITED STATES FIDELITY & GUARANTY COMPANY, Plaintiff, v. ROBERT KAHRE, et al, Defendants, | CV-S-96-742-LDG/RJJ ORDER |

This matter comes before the court on plaintiff's application for default judgment (#31). After defendant Robert Kahre appeared in this action and failed to file an answer to the complaint, the clerk of court entered default against him. Defendant has not filed an opposition to this motion for default judgment. Accordingly, the motion will be granted.

IT IS HEREBY ORDERED that plaintiff's application for default judgment (#31) is GRANTED.

DATED this 16 day of July, 1998.

/s/ Lloyd D. George
Lloyd D. George
United States District Judge

ENTERED AND SERVED
JUL 20, 1998
CLERK, U.S. DISTRICT COURT
DISTRICT OF NEVADA
By /s/ ?DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

| | |
|---|---|
| UNITED STATES FIDELITY & GUARANTY COMPANY, | CV-S-96-742-LDG/RJJ |
| Plaintiff, | JUDGMENT |
| v. | |
| ROBERT KAHRE, et al, | |
| Defendants, | |

Plaintiff United States Fidelity & Guaranty Company's motion for default judgment having come before the court, and the court having considered the issues therein and rendered its decision,

IT IS HEREBY ORDERED that judgment is entered in favor of plaintiff United States Fidelity & Guaranty Company and against defendant Robert Kahre in the amount of $75,759.52.

DATED this 16th day of July, 1998.

/s/ Lloyd D. George
Lloyd D. George
United States District Judge

**CONSTITUTION FOR THE UNITED STATES OF AMERICA**

Constitution for the United States of America, Article I, Section 8, Clause 5:

"To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standards of Weights and Measures."

Constitution for the United States of America, Article I, Section 10, Clause 1:

"No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of contracts, or grant any Title of Nobility."

Constitution for the United States of America, Article III, Section 1:

"Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Constitution for the United States of America.
Amendment VII:

"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law."

**5 U.S.C.§ 5303. Annual adjustments to pay schedules**

(a) Effective as of the first day of the first applicable pay period beginning on or after January 1 of each calendar year, the rates of basic pay for each statutory pay system shall be increased by the percentage (rounded to the nearest one-tenth of 1 percent) equal to one-half of 1 percentage point less than the percentage by which the ECI for the base quarter of the year before the preceding calendar year exceeds the ECI for the base quarter of the second year before the preceding calendar year (if at all).

(b)(l) If, because of national emergency or serious economic conditions affecting the general welfare, the President should consider the pay adjustment which would otherwise be required by subsection (a) in any year to be inappropriate, the President shall-

(A) prepare and transmit to Congress before September 1 of the preceding calendar year a plan for such alternative pay adjustments as he considers appropriate, together with the reasons therefor; and

(B) adjust the rates of pay of each statutory pay system, in accordance with such plan, effective on the same day as the increase under subsection (a) would otherwise take effect.

(2) In evaluating an economic condition affecting the general welfare under this subsection, the President shall consider pertinent economic measures including, but not limited to, the Indexes of Leading Economic Indicators, the Gross National Product, the unemployment rate, the budget deficit, the Consumer Price Index, the Producer Price Index, the Employment Cost Index, and the Implicit Price Deflator for Personal Consumption Expenditures.

(3) The President shall include in the report to

Congress under paragraph (1)(A) his assessment of the impact that the alternative pay adjustments under this subsection will have on the Government's ability to recruit and retain well-qualified employees.

(c) The rates of basic pay that take effect under this section-

(1) shall modify, supersede, or render inapplicable, as the case may be, to the extent inconsistent therewith, any prior rates of basic pay under the statutory pay system involved (as last adjusted under this section or prior provisions of law); and

(2) shall be printed in the Federal Register and the Code of Federal Regulations.

(d) An increase in rates of basic pay that takes effect under this section is not an equivalent increase in pay within the meaning of section 5335.

(e) This section does not impair any authority pursuant to which rates of basic pay may be fixed by administrative action.

(f) Pay may not be paid, by reason of any provision of this section (disregarding any comparability payment payable), at a rate in excess of the rate of basic pay payable for level V of the Executive Schedule.

(g) Any rate of pay under this section shall be initially adjusted, effective on the effective date of the rate of pay, under conversion rules prescribed by the President or by such agency or agencies as the President may designate.

**FRCP RULE 55. Default.**

(a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.

(b) Judgment. Judgment by default may be entered as follows:

(1) By the Clerk. When the plaintiffs claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if the defendant has been defaulted for failure to appear and is not an infant or incompetent person.

(2) By the Court. In all other cases the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guard- ian, committee, conservator, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial

by jury to the parties when and as requfred by any statute of the United States.

(c) Setting Aside Default. For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).

(d) Plaintiffs, Countercliamants, Cross-Claimants. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(c).

(e) Judgment Against the United States. No judgment by default shall be entered against the United States or an officer or agency thereof unless the claimant estahhshes a claim or right to relief by evidence satisfactory to the court.

**28 U.S.C. § 371(b):**

"(b)(1) Any justice or judge of the United States appointed to hold office during good behavior may retain the office but retire from regular active service after attaining the age and meeting the service requirements, whether continuous or otherwise, of subsection (c) of this section and shall, during the remainder of his or her lifetime, continue to receive the *salary of the office* if he or she meets the requirements of subsection (f)."

**28 U.S.C. § 371(f):**

"(f)(1) In order to continue receiving the salary of the office under subsection (b), a justice must be certified in each calendar year by the Chief Justice, and a judge must be certified by the chief judge of the circuit in which the judge sits, as having met the requirements set forth in at least one of the following subparagraphs: . . ."

**28 U.S.C. 455:**

"(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a ***personal bias or prejudice concerning a party,*** or ***personal knowledge of disputed evidentiary facts*** concerning the proceedings.

(3) Where he has ***served In governmental employment*** and in such capacity participated as counsel, advisor, or material witness concerning the proceeding or ***expressed an opinion*** concerning the merits of the particular case in controversy."

**28 U.S.C. § 461. Adjustments in certain salaries**

(a)(1) Subject to paragraph (2), effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5303 of title 5 in the rates of pay under the General Schedule (except as provided in subsection (b)), each salary rate which is subject to adjustment under this section shall be adjusted by an amount, rounded to the nearest multiple of $100 (or if midway between multiples of $100, to the next higher multiple of $100) equal to the percentage of such salary rate which corresponds to the most recent percentage change in the ECI (relative to the date described in the next sentence), as determined under section 704(a)(1) of the Ethics Reform Act of 1989. The appropriate date under this sentence is the first day of the fiscal year in which such adjustment in the rates of pay under the General Schedule takes effect.

(2) In no event shall the percentage adjustment taking effect under paragraph (1) in any calendar year (before rounding), in any salary rate, exceed the percentage adjustment taking effect in such calendar year under section 5303 of title 5 in the rates of pay under the General Schedule.

(b) Subsection (a) shall not apply to the extent it would reduce the salary of any individual whose compensation may not, under section 1 of article III of the Constitution of the United States, be diminished during such individual's continuance in office.

**28 U.S.C. § 1652. State laws as rules of decision.**

"The laws of the several states, except where the constitution or treaties of the United States or Acts of congress otherwise require or provide, shall be regarded as rules of decision in civil action in the courts of the United States, in cases where they apply."

**28 U.S.C. § 2106. Determination**

"The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances."

**31 U.S.C. Sec. 5103. Legal tender**

"United States coins and currency (including Federal reserve notes and circulating notes of Federal reserve banks and national banks) are legal tender for all debts, public charges, taxes, and dues. Foreign gold or silver coins are not legal tender for debts."

**31 USC Sec. 5112. Denominations, specifications, and design of coins.**

"(a) The Secretary of the Treasury may mint and issue only the following coins:
(1) a dollar coin that is 1.043 inches in diameter.
(2) a half dollar coin that is 1.205 inches in diameter and weighs 11.34 grams.
(3) a quarter dollar coin that is 0.955 inch in diameter and weighs 5.67 grams.
(4) a dime coin that is 0.705 inch in diameter and weighs 2.268 grams.
(5) a 5-cent coin that is 0.835 inch in diameter and weighs 5 grams.
(6) except as provided under subsection (c) of this section, a one-cent coin that is 0.75 inch in diameter and weighs 3.11 grams.
(7) A fifty dollar gold coin that is 32.7 millimeters in diameter, weighs 33.931 grams, and contains one troy ounce of fine gold.
(8) A twenty-five dollar gold coin that is 27.0 millimeters in diameter, weighs 16.966 grams, and contains one-half troy ounce of fine gold.
(9) A ten dollar gold coin that is 22.0 millimeters in diameter, weighs 8.483 grams, and contains one-fourth troy ounce of fine gold.
(10) A five dollar gold coin that is 16.5 millimeters in diameter, weighs 3.393 grams, and contains one-tenth troy ounce of fine gold.
(b) The half dollar, quarter dollar, and dime coins are clad coins with 3 layers of metal. The 2 identical outer layers are an alloy of 75 percent copper and 25 percent nickel. The inner layer is copper. The outer layers are metallurgically

bonded to the inner layer and weigh at least 30 percent of the weight of the coin. The dollar coin shall be golden in color, have a distinctive edge, have tactile and visual features that make the denomination of the coin readily discernible, be minted and fabricated in the United States, and have similar metallic, anti-counterfeiting properties as United States coinage in circulation on the date of enactment of the United States $1 Coin Act of 1997. The 5-cent coin is an alloy of 75 percent copper and 25 percent nickel. In minting 5-cent coins, the Secretary shall use bars that vary not more than 2.5 percent from the percent of nickel required. Except as provided under subsection (c) of this section, the one-cent coin is an alloy of 95 percent copper and 5 percent zinc. In minting gold coins, the Secretary shall use alloys that vary not more than 0.1 percent from the percent of gold required. The specifications for alloys are by weight.

(c) The Secretary may prescribe the weight and the composition of copper and zinc in the alloy of the one-cent coin that the Secretary decides are appropriate when the Secretary decides that a different weight and alloy of copper and zinc are necessary to ensure an adequate supply of one cent coins to meet the needs of the United States.

(d)(1) United States coins shall have the inscription "In God We Trust". The obverse side of each coin shall have the inscription "Liberty". The reverse side of each coin shall have the inscriptions "United States of America" and "E Pluribus Unum" and a designation of the value of the coin. The design on the reverse side of the dollar, half dollar, and quarter dollar is an eagle. The Secretary of the Treasury, in consultation with the Congress, shall select appropriate designs for the obverse and reverse sides of the dollar coin. The coins have an inscription of the year of minting or issuance. However, to prevent or alleviate a shortage of a denomination, the

Secretary may inscribe coins of the denomination with the year that was last inscribed on coins of the denomination.
(2) The Secretary shall prepare the devices, models, hubs, and dies for coins, emblems, devices, inscriptions, and designs authorized under this chapter. The Secretary may adopt and prepare new designs or models of emblems or devices that are authorized in the same way as when new coins or devices are authorized. The Secretary may change the design or die of a coin only once within 25 years of the first adoption of the design, model, hub, or die for that coin. The Secretary may procure services under section 3109 of title 5 in carrying out this paragraph.
(e) Notwithstanding any other provision of law, the Secretary shall mint and issue, in quantities sufficient to meet public demand, coins which -
(1) are 40.6 millimeters in diameter and weigh 31.103 grams;
(2) contain .999 fine silver;
(3) have a design -
(A) symbolic of Liberty on the obverse side; and
(B) of an eagle on the reverse side;
(4) have inscriptions of the year of minting or issuance, and the words "Liberty", "In God We Trust", "United States of America", "1 Oz. Fine Silver", "E Pluribus Unum", and "One Dollar"; and
(5) have reeded edges.
(f) Silver Coins. -
(1) Sale price. - The Secretary shall sell the coins minted under subsection (e) to the public at a price equal to the market value of the bullion at the time of sale, plus the cost of minting, marketing, and distributing such coins (including labor, materials, dies, use of machinery, and promotional and overhead expenses).
(2) Bulk sales. - The Secretary shall make bulk sales of the

coins minted under subsection (e) at a reasonable discount.
(3) Numismatic items. - For purposes of section 5132(a)(1) of this title, all coins minted under subsection (e) shall be considered to be numismatic items. (g) For purposes of section 5132(a)(1) of this title, all coins minted under subsection (e) of this section shall be considered to be numismatic items.
(h) The coins issued under this title shall be legal tender as provided in section 5103 of this title.
(i)(1) Notwithstanding section 5111(a)(1) of this title, the Secretary shall mint and issue the gold coins described in paragraphs (7), (8), (9), and (10) of subsection (a) of this section, in quantities sufficient to meet public demand, and such gold coins shall -
(A) have a design determined by the Secretary, except that the fifty dollar gold coin shall have -
(i) on the obverse side, a design symbolic of Liberty; and
(ii) on the reverse side, a design representing a family of eagles, with the male carrying an olive branch and flying above a nest containing a female eagle and hatchlings;
(B) have inscriptions of the denomination, the weight of the fine gold content, the year of minting or issuance, and the words "Liberty", "In God We Trust", "United States of America", and "E Pluribus Unum"; and
(C) have reeded edges.
(2)(A) The Secretary shall sell the coins minted under this subsection to the public at a price equal to the market value of the bullion at the time of sale, plus the cost of minting, marketing, and distributing such coins (including labor, materials, dies, use of machinery, and promotional and overhead expenses).
(B) The Secretary shall make bulk sales of the coins minted under this subsection at a reasonable discount.

(3) For purposes of section 5132(a)(1) of this title, all coins minted under this subsection shall be considered to be numismatic items.

(4)(A) Notwithstanding any other provision of law and subject to subparagraph (B), the Secretary of the Treasury may change the diameter, weight, or design of any coin minted under this subsection or the fineness of the gold in the alloy of any such coin if the Secretary determines that the specific diameter, weight, design, or fineness of gold which differs from that otherwise required by law is appropriate for such coin. (B) The Secretary may not mint any coin with respect to which a determination has been made by the Secretary under subparagraph (A) before the end of the 30-day period beginning on the date a notice of such determination is published in the Federal Register.

(C) The Secretary may continue to mint and issue coins in accordance with the specifications contained in paragraphs (7), (8), (9), and (10) of subsection (a) and paragraph (1)(A) of this subsection at the same time the Secretary in minting and issuing other bullion and proof gold coins under this subsection in accordance with such program procedures and coin specifications, designs, varieties, quantities, denominations, and inscriptions as the Secretary, in the Secretary's discretion, may prescribe from time to time.

(j) General Waiver of Procurement Regulations. -

(1) In general. - Except as provided in paragraph (2), no provision of law governing procurement or public contracts shall be applicable to the procurement of goods or services necessary for minting, marketing, or issuing any coin authorized under paragraph (7), (8), (9), or (10) of subsection (a) or subsection (e), including any proof version of any such coin.

(2) Equal employment opportunity. - Paragraph (1) shall not

relieve any person entering into a contract with respect to any coin referred to in such paragraph from complying with any law relating to equal employment opportunity.

(k) The Secretary may mint and issue bullion and proof platinum coins in accordance with such specifications, designs, varieties, quantities, denominations, and inscriptions as the Secretary, in the Secretary's discretion, may prescribe from time to time.

(l) Redesign and Issuance of Quarter Dollar in Commemoration of Each of the 50 States. -

(1) Redesign beginning in 1999. -

(A) In general. - Notwithstanding the fourth sentence of subsection (d)(1) and subsection (d)(2), quarter dollar coins issued during the 10-year period beginning in 1999, shall have designs on the reverse side selected in accordance with this subsection which are emblematic of the 50 States.

(B) Transition provision. - Notwithstanding subparagraph (A), the Secretary may continue to mint and issue quarter dollars in 1999 which bear the design in effect before the redesign required "1998" as required to ensure a smooth transition into the 10-year program under this subsection.

(2) Single state designs. - The design on the reverse side of each quarter dollar issued during the 10-year period referred to in paragraph (1) shall be emblematic of 1 of the 50 States.

(3) Issuance of coins commemorating 5 states during each of the 10 years. -

(A) In general. - The designs for the quarter dollar coins issued during each year of the 10-year period referred to in paragraph (1) shall be emblematic of 5 States selected in the order in which such States ratified the Constitution of the United States or were admitted into the Union, as the case may be.

(B) Number of each of 5 coin designs in each year. - Of the

quarter dollar coins issued during each year of the 10-year period referred to in paragraph (1), the Secretary of the Treasury shall prescribe, on the basis of such factors as the Secretary determines to be appropriate, the number of (4) Selection of design. -

(A) In general. - Each of the 50 designs required under this subsection for quarter dollars shall be -

(i) selected by the Secretary after consultation with -

(I) the Governor of the State being commemorated, or such other State officials or group as the State may designate for such purpose; and

(II) the Commission of Fine Arts; and

(ii) reviewed by the Citizens Commemorative Coin Advisory Committee.

(B) Selection and approval process. - Designs for quarter dollars may be submitted in accordance with the design selection and approval process developed by the Secretary in the sole discretion of the Secretary.

(C) Participation. - The Secretary may include participation by State officials, artists from the States, engravers of the United States Mint, and members of the general public. (D) Standards. - Because it is important that the Nation's coinage and currency bear dignified designs of which the citizens of the United States can be proud, the Secretary shall not select any frivolous or inappropriate design for any quarter dollar minted under this subsection.

(E) Prohibition on certain representations. - No head and shoulders portrait or bust of any person, living or dead, and no portrait of a living person may be included in the design of any quarter dollar under this subsection.

(5) Treatment as numismatic items. - For purposes of sections 5134 and 5136, all coins minted under this subsection shall be considered to be numismatic items.

(6) Issuance. -

(A) Quality of coins. - The Secretary may mint and issue such number of quarter dollars of each design selected under paragraph (4) in uncirculated and proof qualities as the Secretary determines to be appropriate.

(B) Silver coins. - Notwithstanding subsection (b), the Secretary may mint and issue such number of quarter dollars of each design selected under paragraph (4) as the Secretary determines to be appropriate, with a content of 90 percent silver and 10 percent copper.

(C) Sources of bullion. - The Secretary shall obtain silver for minting coins under subparagraph (B) from available resources, including stockpiles established under the Strategic and Critical Materials Stock Piling Act.

(7) Application in event of the admission of additional states. - If any additional State is admitted into the Union before the end of the 10-year period referred to in paragraph (1), the Secretary of the Treasury may issue quarter dollar coins, in accordance with this subsection, with a design which is emblematic of such State during any 1 year of such 10 year period, in addition to the quarter dollar coins issued during such year in accordance with paragraph (3)(A).

(m) Commemorative Coin Program Restrictions. -

(1) Maximum number. - Beginning January 1, 1999, the Secretary may mint and issue commemorative coins under this section during any calendar year with respect to not more than 2 commemorative coin programs.

(2) Mintage levels. -

(A) In general. - Except as provided in subparagraph (B), in carrying out any commemorative coin program, the Secretary shall mint -

(i) not more than 750,000 clad half-dollar coins;

(ii) not more than 500,000 silver one-dollar coins; and

(iii) not more than 100,000 gold five-dollar or ten-dollar coins.
(B) Exception. - If the Secretary determines, based on independent, market-based research conducted by a designated recipient organization of a commemorative coin program, that
the mintage levels described in subparagraph (A) are not adequate to meet public demand for that commemorative coin, the Secretary may waive one or more of the requirements of subparagraph (A) with respect to that commemorative coin program.
(C) Designated recipient organization defined. - For purposes of this paragraph, the term "designated recipient organization" means any organization designated, under any provision of law, as the recipient of any surcharge imposed on the sale of any numismatic item.

**Constitution for the State of Nevada,**
**Article IV, Section 21:**

"In all cases enumerated in the preceding section, and in all other cases where a general law can be made applicable, all laws shall be general and of uniform operation throughout the state."

**Constitution for the State of Nevada,**
**Article VIII, Section 1:**

"The legislature shall pass no special act in any manner relating to corporate powers except for municipal purposes; but corporations may be formed under general laws, and all such laws may, from time to time, be altered or repealed."

**Nevada Attorney General's Opinion 506 of May 7, 1968, at page 186-187.**

"NRS 80.010 has *general* application to *all* foreign corporations, except as otherwise expressly provided in statute. . . The requested exception as respects nonresident insurance brokers, *or any of them*, is not authorized in NRS 80.240, and would, therefore, be improper and invalid, if allowed or sanctioned. ("*Inclusion unius, exclusio alterius*"). . . . As a state official (Insurance Commissioner), it is elementary and well-established Nevada law that you have no other authority or power than that expressly provided in statute by the Legislature. . . Absent proper enabling statutory provision in Nevada(equivalnet to or corresponding with California Insurance Code SEction 1659 and 1660, a sufficient legal baisis therfor in said state), grant or sanction of the requested exception or nonresidnet brokers, or andy of them, fro the application of NRS 80.010, would be "discriminatory" or preferential," excessive of your present authroitya nd powers, in derogation of the Legislature's provice and funciton, and wholly ineffectual and invalid." (Emphasis in the original)

**NRS 80.010 Requirements to do business in Nevada: filings; limitations on name; certification of authority to engage in certain businesses.**

"1. Before commencing or doing any business in this state, every corporation organized pursuant to the laws of another state, territory, the District of Columbia, a dependency of the United States or a foreign country, that enters this state to do business must:

(a) File in the office of the secretary of state of this state:

(1) A certificate of corporate existence issued not more than 90 days before the date of filing by an authorized officer of the jurisdiction of its incorporation setting forth the filing of documents and instruments related to the articles of incorporation, or the governmental acts or other instrument or authority by which the corporation was created. If the certificate is in a language other than English, a translation, together with the oath of the translator and his attestation of its accuracy, must be attached to the certificate.

(2) A certificate of acceptance of appointment executed by its resident agent, who must be a resident or located in this state. The certificate must set forth the name of the resident agent, his street address for the service of process, and his mailing address if different from his street address. The street address of the resident agent is the registered office of the corporation in this state.

(3) A statement executed by an officer of the corporation, acknowledged before a person authorized by the laws of the place where the acknowledgment is taken to take acknowledgments of deeds, setting forth:

(I) A general description of the purposes of the corporation; and

(II) The authorized stock of the corporation and the number and par value of shares having par value and the number of shares having no par value.

(b) Lodge in the office of the secretary of state a copy of the document most recently filed by the corporation in the jurisdiction of its incorporation setting forth the authorized stock of the corporation, the number of par-value shares and their par value, and the number of no-par-value shares.

2. The secretary of state shall not file the documents required by subsection 1 for any foreign corporation whose name is the same as, or deceptively similar to the name of a corporation, limited partnership or limited-liability company existing pursuant to the laws of this state or a foreign corporation, foreign limited partnership or foreign limited-liability company authorized to transact business in this state or a name to which the exclusive right is at the time reserved in the manner provided in the laws of this state, unless the written acknowledged consent of the holder of the registered or reserved name to use the same name or the requested similar name accompanies the articles of incorporation.

3. The secretary of state shall not accept for filing the documents required by subsection 1 or NRS 80.110 for any foreign corporation if the name of the corporation contains the words "engineer," "engineered," "engineering," "professional engineer" or "licensed engineer" unless the state board of professional engineers and land surveyors certifies that:

(a) The principals of the corporation are licensed to practice engineering pursuant to the laws of this state; or

(b) The corporation is exempt from the prohibitions of NRS 625.520.

4. The secretary of state shall not accept for

filing the documents required by subsection 1 or NRS 80.110 for any foreign corporation if it appears from the documents that the business to be carried on by the corporation is subject to supervision by the commissioner of financial institutions, unless the commissioner certifies that:

(a) The corporation has obtained the authority required to do business in this state; or

(b) The corporation is not subject to or is exempt from the requirements for obtaining such authority.

**NRS 80.210 Penalties for failure to comply with requirements for qualification; enforcement.**

"1. Every corporation which fails or neglects to comply with the provisions of NRS 80.010 to 80.040, inclusive:

(a) Is subject to a fine of not less than $500, to be recovered in a court of competent jurisdiction; and

(b) Except as otherwise provided in subsection 2, may not commence or maintain any action or proceeding in any court of this state until it has fully complied with the provisions of NRS 80.010 to 80.040, inclusive.

2. An action or proceeding may be commenced by such a corporation if an extraordinary remedy available pursuant to chapter 31 of NRS is all or part of the relief sought. Such an action or proceeding must be dismissed without prejudice if the corporation does not comply with the provisions of NRS 80.010 to 80.040, inclusive, within 45 days after the action or proceeding is commenced.

3. When the secretary of state is advised that a corporation is doing business in contravention of NRS 80.010 to 80.040, inclusive, he shall report that fact to the governor. The governor shall, as soon as practicable, instruct the district attorney of the county where the corporation has its principal place of business or the attorney general, or both, to institute proceedings to recover any applicable fine provided for in this section.

**NRS 679A.150 Compliance required.**

"No person shall transact a business of insurance in Nevada, or relative to a subject of insurance resident, located or to be performed in Nevada or elsewhere, without complying with the applicable provisions of this code."

**NRS 680A.060 Certificate of authority required; penalty.**

"1. A person shall not act as an insurer and an insurer shall not transact insurance in this state by mail or otherwise, except as authorized by a certificate of authority issued by the commissioner and then in full force, and except as to such transactions as are expressly otherwise provided in this code.

2. A domestic insurer and a foreign insurer from offices or by personnel or facilities located in this state shall not solicit insurance applications or otherwise transact insurance in another state or country unless it holds a subsisting certificate of authority granted to it by the commissioner authorizing it to transact the same kind or kinds of insurance in this state.

3. Any officer, director, agent, representative or employee of any insurer who willfully authorizes, negotiates, makes or issues any insurance contract in violation of this section is guilty of a misdemeanor.

**NRS 680A.070 Exceptions to requirement of certificate of authority.**

"A certificate of authority is not required of an insurer with respect to any of the following:

1. Investigation, settlement or litigation of claims under its policies lawfully written in this state, or liquidation of assets and liabilities of the insurer, other than collection of new premiums, all as resulting from its former authorized operations in this state.

2. Except as otherwise provided in subsection 2 of NRS 680A.060, transactions thereunder after issuance of a policy covering only subjects of insurance that are not resident, located or expressly to be performed in this state at the time of issuance, and lawfully solicited, written and delivered outside this state.

3. Prosecution or defense of suits at law, except that no insurer unlawfully transacting insurance in this state without a certificate of authority may institute or maintain, other than defend, any action at law or in equity in any court of this state, either directly or through an assignee or successor in interest, to enforce any right, claim or demand arising out of such an insurance transaction until the insurer, assignee or successor has obtained a certificate of authority. This provision does not apply to any suit or action by the receiver, rehabilitator or liquidator of such an insurer, assignee or successor under laws similar to those contained in chapter 696B of NRS.

4. Transactions pursuant to surplus lines coverages lawfully written under chapter 685A of NRS.

5. A suit, action or proceeding for the enforcement or defense of its rights relative to its investments in this state.

6. Reinsurance, except as to a domestic reinsurer or the reinsurance of a domestic insurer, unless the reinsurance is authorized pursuant to subsection 1 of NRS 681A.110.

7. Transactions in this state involving group life insurance, group health or blanket health insurance, or group annuities where the master policy or contract of such groups was lawfully solicited, issued and delivered pursuant to the laws of a state in which the insurer was authorized to transact insurance, to a group organized for purposes other than the procurement of insurance or to a group approved pursuant to NRS 688B.030 or 689B.026, and where the policyholder is domiciled or otherwise has a bona fide situs.

8. The issuance of annuities by an affiliate of an authorized insurer if the affiliate:

(a) Is approved by the commissioner;

(b) Is organized as a nonprofit educational corporation;

(c) Issues annuities only to nonprofit institutions of education and research; and

(d) Reports and pays any premium tax on the annuities required pursuant to chapter 680B of NRS.

9. Transactions, other than for workers' compensation insurance or for industrial insurance provided pursuant to chapters 616A to 617, inclusive, of NRS, involving the procurement of excess liability insurance above underlying liability coverage or self-insured retention of at least $25,000,000, if procured from an unauthorized alien or foreign insurer who does not solicit, negotiate or enter into such transactions in this state by any means, and if procured by a person:

(a) Whose total annual premiums for property and casualty insurance, not including workers' compensation

or industrial insurance, is $1,000,000 or more; and

(b) Who employs 250 or more full-time employees. A person who procures insurance in accordance with this subsection shall report and pay any premium tax on the insurance required pursuant to NRS 680B.040.

**Remarks of Philip M. Crane upon the passage of the Gold Bullion Act of 1985, Public Law 99-185, 99 Stat. 1177;Congressional Record - House, Extension Of Remarks, January 3, 1985, pgs. 469, 470**

"The power to coin money is expressly delegated to Congress under Article I, Section 8 of the Constitution. The meaning of the phrase is clear, but Congress has been ignoring it for the past 70 years, ever since it delegated power to the Federal Reserve System to print money and create credit ex nihilo. Over those 70 years, our Nation has been plagued with the worst depression, inflation, unemployments, recessions, bankruptcy, and interest rates in our history. Nothing we suffered under an imperfect standard during the 19th century can compare to the damage our economy has sustained under the management of the Federal Reserve.

"The authors of the Constitution wrote Article I, Section 8 precisely for the purpose of outlawing the type of monetary system we now have. The use of the word 'coin' rather than the word 'print,' or the phrase 'emit bills of credit,' was deliberately placed in the Constitution as a reaction to the debacle created by paper money printed and issued by the Continental Congress during the Revolutionary War. It is significant to note that this power of coining money is mentioned in the same sentence in the Constitution as the power to 'fix the standards of weights and measures, for the framers regarded money as a weight of metal and a measure of value.

"For decades now, but especially for the past 10 years, we have had a medium of exchange, the Federal Reserve note, which is fluctuating in its value. As Roger Sherman, a delegate to the Constitutional Convention wrote,

'If what is used as a medium of exchange is fluctuating in its value, it is no better than unjust weights and measures * * * which are condemned by the Laws of God and man.' With the issuance of new gold coins by the Treasury, the Federal Reserve's monopoly on money will be challenged. *The 'American Gold Eagle Coin Act of 1985' represents a major step toward replacement of our present irredeemable paper money system with a gold based system.*"

**Congressional Record - House, November 20, 1985, pg. 32634**

"The purpose of a monetary standard is to fix the weight and quality of the monetary unit. A standard monetary unit is something which itself has value; it cannot be an abstraction, a legal fiction, or debt, such as the U.S. dollar is today. A depreciating monetary unit is not an acceptable standard of value."

**"Code of Ethics for Government Service"**
**Public Law 96-303, 94 Stat. 855:**

"Any person in Government service should:

I. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government Department.

II. Uphold the Constitution, laws, and regulations of the United States and of all governments therein and never be a party to their evasion....

V. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not....

VIII. Never use any information gained confidentially in the performance of governmental duties as a means of making private gain.

IX. Expose corruption wherever discovered.

X. Uphold these principles, ever conscious that public office is a public trust."

**Congressional Record - House, May 29, 1973, pg. 16968**

"The bill for the first time contains a new definition of the dollar, this in terms of special drawing rights - SDR. The special drawing right is an international reserve asset, sometimes called paper gold, created in 1968 by the International Monetary Fund as a supplement to gold, and hopefully as an eventual replacement for gold as monetary asset. The SDR originally was valued at $1 or one thirty-fifth of an ounce of gold, which was the gold value of the dollar in 1968. Like gold, the special drawing right has a constant value and therefore this bill defines the devalued dollar a a fraction of on SDR. Specifically, the dollar would be defined as being worth 82.89 percent of one SDR, or $1 equals 0.828948 SDR."

**Congressional Record - House, May 29, 1973, pg 16977:**

"Mr. Chairman, we are in deep financial trouble at home and abroad because the weakness of the American dollar arises right out of weakness in the American economy. For too many years has there been unchecked inflation in this country, inflation that was spawned and nurtured by borrowing and spending billions of interest-bearing dollars, and Congress, despite all its alibis and attempts to shift responsibility, has been and still is a prime contributor to this fiscal insanity.

We have here today a ***bill to rubber stamp*** something that was done without consulting Congress - the devaluation of the dollar that was put into effect on February 12 of this year, ***despite the Constitution of the United States which says that Congress shall 'regulate the value of money,' and despite the law which says*** - and let me quote it:
***. . . Unless Congress by law authorizes such action, neither the President nor any person or agency shall on behalf of the United States. . . propose or agree to any change in the par value of the United States dollar...***"

Robert Kahre, Sui Juris
Citizen/Sovereign
6049 Boulder Highway
Las Vegas, Nevada pz 89122
Tel: 702-454-9221 (Defendant/Petitioner)

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

| | |
|---|---|
| UNITED STATES FIDELITY & GUARANTY COMPANY,<br><br>Plaintiff,<br><br>v.<br><br>ROBERT KAHRE AND DOES I - X INCLUSIVE<br><br>Defendant/Petitioner,<br><br>v.<br><br>HOWARD D. MCKIBBEN, LLOYD D. GEORGE, III, TRAVIS WILLIAMSON,<br><br>Respondents. | CV-S-96-742-LDG/RJJ |

**AFFIDAVIT OF ALEXANDER LOGLIA IN SUPPORT OF MOTION FOR STAY OF JUDGMENT PENDING APPEAL**

(end of page 1)

STATE OF NEVADA )
) ss:
COUNTY OF CLARK )

Alexander Loglia, being first duly sworn, deposes and says that he has personal knowledge and is competent to testify to the following facts:

1. I am of age of majority, and am not under any legal disability.
2. I make this affidavit in support of Robert Kahre's NOTICE OF MOTION FOR STAY OF JUDGMENT PENDING APPEAL in Case No. CV-S-96-00742-LDG (RJJ) in the United States District Court for the District of Nevada.
3. I did appear at the Offices of the Clerk of the United States District Court, located at 300 S. Las Vegas Blvd, 4th Floor, at approximately 1:15 pm on Wednesday, December 23, 1998.
4. I was served by a Clerk who identified himself as David Oates ("Oates").
5. I, Alexander Loglia, filed a Notice of Appeal for Robert Kahre, and was told that the filing fee was 105 dollars.
6. I informed Oates that I wanted to pay the filing fee in gold coin, and handed him three 5 dollar gold coins, explaining that the market value of those coins was approximately forty dollars a piece, and that this should cover the filing fee.
7. Oates informed me that he had never had to do this before, and would have to check with his supervisor, and he left the window.
8. Oates returned shortly with a woman later identified

as "Faye". Faye took the coins and said she would have to look into the matter and it may take a while. She asked me what the value of the coins were.

(end of page 2)

9. I explained to Faye that under 31 U.S.C. § 5112 (i)(2)(A), the coins had a value of the market value of the gold content at the time of sale, plus the cost of minting, marketing, and distribution. I also explained that under 31 U.S.C. § 5112 (h), the coins were legal tender pursuant to 31 U.S.C. 5103, but that the coins had a face value far below market rate, and that I needed to know whether the Court would accept the coins at face value or market rate. I offered Faye three 5 dollar gold coins (31 U.S.C. § 5112 (a)(10)) to pay the appeal filing fee, with a total weight of 3/10 oz. gold. In total, I gave Faye three 5 dollar gold coins and a 50 dollar gold coin to examine, along with copies of 31 U.S.C. § 5103 and 5112. A copy of the statutes is attached hereto as **Exhibit 1** and made part hereof.

10. Faye stated they would get back to me, and asked me to wait.

11. Approximately a half hour later, another woman returned, later identified as "Cindy", who stated that they would have to accept the coins at face value. She further stated that it would be a shame for me to pay the appeal filing fee with the gold coin as the actual value of the coins far exceeded their face value, and that they would have to deposit the gold coins with the bank and the money would be wasted. Cindy returned the coins and the statutes to me.

12. I then tendered a 5 dollar gold coin and a Federal Reserve note with a face value of $100 to Oates who

was also present. Oates issued a receipt totaling 105.00, and a wrote and initialed a note on the receipt stating "$5.00 was paid in a five dollar gold piece." A copy of said receipt is attached hereto as **Exhibit 2** and made part hereof.

13. A copy of the gold coin and Federal Reserve note tendered to the Clerk are attached hereto as **Exhibit 3** and made part hereof.

(end of page 3)

14. Further affiant sayeth naught.

/s/ Alexander Loglia
Alexander C. Loglia

SUBSCRIBED and SWORN to before me
this 28th day of December, 1998.

/s/ Debra Ann Rosenbaum
Notary Public in and for said
County and State

[seal]

(end of page 4)

*AFFIDAVIT OF ROBERT KAHRE*

STATE OF NEVADA )
) SS.
COUNTY OF CLARK )

Robert Kahre, being first duly sworn, deposes and says:

1. I am the Defendant/Appellant in Case No. 99-150-18 before the United States Court of Appeals for the Ninth Circuit, United States Fidelity & Guaranty Co. v. Robert Kahre, and if called upon at trial could competently testify as to the matters herein; I know the contents of this Affidavit, and the same is true of my own knowledge, except as to the matters which are herein stated on my information and belief and as to those matters that I believe them to be true.

2. I, Robert Kahre, am the sole proprietor and owner of Wright Painting & Drywall and Bobby K's Homecare Services.

3. I privately contract with other people that provide services for Wright Painting & Drywall and Bobby K's and tender payment of debts for such services in gold and silver coin, minted by the U.S. Mint in accordance with the Constitution for the United States of America, Article I, Section 8, Clause 5, and Article I, Section 10, Clause 1, and as codified at 31 U.S.C. 5112.

4. On or about February 28, 1995, I personally met with and spoke to Harvey Lehrfield, a representative of USF&G, concerning the payment of payroll in dollars, gold and silver coin. The gold and silver coin are dollars and legal tender.

(end of page 1)

5. Phillip Bracken, of Bracken Insurance Agency, was also present at the time of the aforesaid meeting with

USF&G's representative, Mr. Lehrfield. Mr. Bracken provides an insurance broker's service. Mr. Bracken knew that the gold and silver dollars were being used as tender for services prior to the meeting with USF&G 's representative

6. Mr. Lehrfield was shown and given a copy of the contract that I used with those that provide services to Wright Painting & Drywall and Bobby K's. I informed and explained to Mr. Lehrfield that I was paying for the contracted services in dollars, gold and silver coin, in hand. I personally showed him a silver dollar which was minted under authority of 31 U.S.C. 5112.

7. Mr. Lehrfield spent about twenty (20) minutes reviewing the payroll accounts of the operation, and indicated that he was quite satisfied that the payment of payroll was in fact being tendered in the gold and silver coin.

8. After Mr. Lehrfield's investigation of the payroll accounts in February of 1995, payment was made to and accepted by USF&G at a one-for-one face value rate. The dollar value is on the face of the gold and silver coin and the Federal Reserve Notes.

9. About one year later, in 1996, Mr. Lehrfield contacted Wright Painting & Drywall and inquired whether payroll was still being tendered in dollars, gold and silver coin. Mr. Lehrfield was properly informed that all payroll was in fact being paid in the coin. Mr. Lehrfield thereafter requested a payroll statement and

(end of page 2)

directed Wright Painting & Drywall to continue like the previous year, 1995.

10. At no time did Mr. Lehrfield ever state or otherwise indicate by writing or verbally that there was any dissatisfaction with the form or amount of payments made to USF&G by me, or that said payments were in any manner

otherwise deficient.

11. Payments were made to USF&G up to and through April of 1996. All payments were made at the par, one-for-one, face value. The dollar value is minted on the face of the gold and silver coin, and is printed on the face of the paper Federal Reserve Note.

Further affiant saith not.

/s/ Robert Kahre
Robert Kahre
6049 Boulder Highway
Las Vegas, Nevada 89122

STATE OF NEVADA )
) ss:
COUNTY OF CLARK )

SUBSCRIBED and SWORN to before me this 21st day of April, 1999.

/s/ Debra Ann Rosenbaum
NOTARY PUBLIC, in and for said
County and State.

(end of page 2)

TRAVIS C. WILLIAMSON, ESQ.
State Bar #002846
WILLIAMSON & RUSH, CHTD.
302 E. Carson Ave. #1001
Las Vegas, Nevada 89101
(702) 3854284

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

| | |
|---|---|
| UNITED STATES FIDELITY & GUARANTY COMPANY, | CV-S-96-742-LDG/RJJ |
| Plaintiff, | |
| v. | |
| ROBERT KAHRE AND DOES I - X INCLUSIVE | |
| Defendant, | |

COMPLAINT FOR 1) BREACH OF CONTRACT; 2) ACCOUNTING 3) ATTORNEY'S FEES

Plaintiff, UNITED STATES FIDELITY & GUARANTY COMPANY, (hereinafter referred to as "USF&G") complains and alleges as follows:

JURISDICTION AND VENUE

1. That US F&G is a Maryland Corporation and is a citizen of Maryland, with its principle place of business being Maryland.

2. That Defendant, ROBERT KAHRE, is a citizen and resident of the State of Nevada.

(end of page 1)

3. That the matter in controversy exceeds the sum of $50,000, exclusive of interest and costs. Subject matter jurisdiction is conferred upon this Court by 28 U.S.C., Section 1332 (a).

4. This Court is the proper venue for this matter pursuant to 28 U.S.C. Section 1391(a) in that defendant, ROBERT KAHRE, resides in this judicial district.

5. The Southern Division of this Court is the proper venue for this action in accordance with Local Rule IA 8-1(a) in that the action arises out of events taking place in Clark County.

## THE PARTIES AND THEIR RELATIONSHIPS

6. At all relevant times herein, plaintiff, USF&G, was and is a corporation organized and existing under the laws of the State of Maryland and authorized to do business in the State of Nevada.

7. At all relevant times herein, defendant, ROBERT KAHRE, was and is a resident of the County of Clark, State of Nevada.

## FIRST CAUSE OF ACTION
(Breach of Contract)

8. Plaintiff, USF&G, between January 14,1995 and up through and including the present time, issued various

policies of commercial liability insurance to defendant, ROBERT KAHRE, at defendant's request.

9. Defendant agreed to pay all estimated premiums due under the policies, subject to audits on the premium amounts.

10. Plaintiff has performed all conditions pursuant to the policies of insurance.

(end of page 2)

11. Since January of 1996, audits have been conducted for some of the insurance policies issued to Kahre. Due to a lack of cooperation on the part of Kahre, other policies have not yet been audited. The audits that have been conducted have identified additional premiums owed for the coverages provided. The amounts due from the completed audits, coupled with previously unpaid account balances total at least $68,484. Plaintiff alleges that additional amounts may be due under further audits for the policies not yet audited. Plaintiff requests leave of the Court to amend this Complaint to add any additional amounts identified.

12. Demand has been made upon defendant numerous times for payment of the earned premiums, but defendant has refused and neglected to the pay the same, or any part thereof.

13. There is therefore now due, owing, and unpaid from defendant to plaintiff the sum of at least $68,484, together with prejudgment interest thereon, at the legal rate of interest until paid.

SECOND CAUSE OF ACTION

(Accounting)

14. Plaintiff hereby repeats and realleges all of the allegations contained in Paragraphs 1 through 13, inclusive, as through fully set forth herein.

15. As the result of the aforementioned actions of the defendant, the plaintiff has been denied a full and complete accounting of all premiums earned and monies owed on the insurance policies. Plaintiff, accordingly, seeks an Order of this Court requiring the Defendant to provide said accounting to the plaintiff. Further, the subject insurance policies provide for defendant to cooperate with regard to all audits necessary to calculate the premiums owed and plaintiff, accordingly, also seeks an

(end of page 3)

Order of this Court requiring the defendant to cooperate in such audits. Plaintiff will seek leave of this Court to amend its Complaint to include any additional premiums owed as a result of this accounting.

## THIRD CAUSE OF ACTION
(Attorney's Fees)

16. Plaintiff hereby repeats and realleges all of the allegations contained in Paragraphs I through 15, inclusive, as through fully set forth herein.

17. As a result of the actions and failings of the defendant, plaintiff has retained the services of legal counsel and has necessarily incurred attorney's fees and costs in prosecuting this action. Further, plaintiff anticipates incurring additional attorney's fees and costs in hereinafter pursuing this action, all in a final amount which is currently unknown. Plaintiff therefore requests an award of reasonable attorney's fees and costs.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. For $68,484.00 in general damages plus pre-judgment interest thereon;

2. That the court order the defendant to provide a complete accounting of all premiums earned, together with Judgment for any additional amount owed pursuant to the accounting;

3. For reasonable attorney's fees and costs of suit incurred herein; and

(end of page 4)

4. For such other and further relief as the Court may deem just and propel in the premises.

DATED this 9th day of August, 1996.

/s/ Travis C. Williamson
Travis C. Williamson, Esq.
Nevada Bar #002846
302 E. Carson Ave. #1001
Las Vegas, NV 89101
Attorney for Plaintiff

(end of page 5)

Robert Kahre, Sui Juris
Citizen Sovereign
c/o 6049 Boulder Highway
Las Vegas Nevada PZ 89122
(702) 454-9221 (Defendant)

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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| UNITED STATES FIDELITY & GUARANTY COMPANY,<br><br>Plaintiff,<br><br>v.<br><br>ROBERT KAHRE AND DOES I - X INCLUSIVE<br><br>Defendants, | CV-S-96-742-LDG/RJJ<br><br>DEFENDANT'S MOTION TO DISMISS COMPLAINT<br><br>DATE OF HEARING<br>TIME OF HEARING |

COMES NOW the Defendant, Robert Kahre, appearing specially and who respectfully moves this Honorable Court for an Order dismissing the Plaintiff's Complaint on file herein, against the said defendant, pursuant to and in accordance with Nevada Rules for Civil Procedure 12 (b) based upon the following grounds;

The Plaintiff lacks standing to commence or maintain an action before this Court pursuant to Rule 12 (b) (2).

The Plaintiff's Complaint fails to state a claim upon which relief can be granted. or cause of action against this Defendant pursuant to Rule 12 (b) (6).

This Motion to Dismiss is made and based upon all the pleadings, papers and records on file herein, the Points and Authorities in support of this motion are filed herewith.

Dated this 6th day of September, in the year of our Lord 1996.

/s/ Robert Kahre
Robert Kahre, Sui Juris
Citizen Sovereign
c/o 6049 Boulder Highway
Las Vegas Nevada PZ 89122
(702) 454-9221

(end of page 1)

SUBSCRIBED and SWORN to before
me this 6th day of September, 1996

[seal]

/s/ Debra Ann Rosenbaum
NOTARY PUBLIC

## NOTICE OF MOTION

TO: UNITED STATES FIDELITY & GUARANTY COMPANY.

PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing Motion on for hearing before Department _____ of the above-entitled Court on the _____day of_____ , 1996, at the hour of_____ , of said day, or as soon thereafter as counsel may be heard.

## POINTS AND AUTHORITIES

I.

1. Plaintiff USF&G by and through its attorney claims and states it is certified and authorized to business in the State of Nevada (see Plaintiff's Complaint page two paragraph six).

2. Plaintiff is not certified nor authorized to do business in the State of Nevada as evidenced by the certificate of non-existence attached hereto and incorporated herein as "Exhibit 1".

3. Plaintiff lacks standing to commence or maintain an action and is not properly before the Court (see N.R.S. 80.010 through 80.40 attached hereto and incorporated herein as Exhibit 2").

N.R.S. 80.010

1. Before commencing or doing any Business in the state, every Corporation organized pursuant to the Laws of another state, territory. the District of Columbia, dependency of the United States or a foreign country. that enters this state to do business must:

(a) File in the office of the Secretary of the State:

(1) A certificate of corporate existence issued not more than 90 days before the date of filing by an authorized officer of the Jurisdiction of its incorporation setting forth the filing of documents and instrument of authority by which the corporation was created. If the certificate is in a language other than English, a translation, together with Oath of the

(end of page 2)

translator and his attestation of its accuracy must he attached to the certificate.

Therefore, the Court lacks jurisdiction to entertain Plaintiff USF&G's complaint pursuant to Court Rule 12 (b) (2)

Based on the foregoing, Defendant, Robert Kahre respectfully requests that the Court Order Plaintiff's Complaint to be dismissed without prejudice.

II.

1. Plaintiff, UNITED STATES FIDELITY & GUARANTY COMPANY, (hereinafter referred to as "USF&G") complains and alleges BREACH OF CONTRACT against Defendant (see Plaintiff's complaint page two paragraph eight).

2. The Plaintiff's claim is over-broad, ambiguous, groundless, deceptive, and further, has failed to evidence any contract or properly refer to any part or portion of any contract with Defendant.

3. Plaintiff USF&G has no signed contract with Defendant Robert Kahre and has failed to state a right or cause of action.

Therefore, Plaintiff USF&G has failed to state a claim upon which relief can be granted. Defendant, Robert Kahre, reserves the right to further amend the pleadings or answer the Complaint, upon further investigation and discovery of material facts.

**CONCLUSIONS**

Based on the foregoing, Defendant, Robert Kahre respectfully requests that the Court Order Plaintiff's Complaint to be dismissed with prejudice.

Attested to this 6th day of September, in the year of our Lord 1996.

Respectfully submitted by:

/s/ Robert Kahre
Robert Kahre Sui / Juris
Defendant / citizen / sovereign
c/o 6049 Boulder Highway
Las Vegas, Nevada PZ 89122
(702) 454-9221

(end of page 3)

**VERIFICATION**

State of Nevada )
)
County of Clark )

Robert Kahre, being first duly sworn, deposes and states; I am the Defendant in the above entitled matter and if called upon at trial could completely testify as to the matters herein; I have read the foregoing Defendants Motion To Dismiss Complaint, know the contents thereof, and all the allegations contained therein, and attest that they are true and correct to the best of my knowledge, information and belief

By: /s/ Robert Kahre
Robert Kahre Sui/Juris
Defendant / citizen sovereign
c/o 6049 Boulder Highway
Las Vegas, Nevada PZ 89122
(702)454-9221

SUBSCRIBED and SWORN to before
me this 6th day of September, 1996.

/s/ Debra Ann Rosenbaum
NOTARY PUBLIC

(end of page 4)

SECRETARY OF STATE
[SEAL]
STATE OF NEVADA

**CERTIFICATE OF NON-EXISTENCE**

I, DEAN HELLER, the duly qualified and elected Nevada Secretary of State, do hereby certify that I am the custodian of the records relating to Title 7 of the Nevada Revised Statutes, and that I am the proper person to make this certificate.

I FURTHER CERTIFY that I have conducted a search of the records on file with the office of the Secretary of State and find no entity organized or qualified in this state under the name of USF AND G - UNITED STATES FIDELITY AND GUARANTY COMPANY as a domestic or foreign corporation, limited partnership, limited-liability company, or limited- liability partnership.

[SEAL]

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of State, at my office, in Carson City, Nevada, on September 3, 1996.

/s/ Dean Heller
Secretary of State

EXHIBIT
1

By /s/ ?
Certification Clerk

SECRETARY OF STATE
[SEAL]
STATE OF NEVADA

**CERTIFICATE OF NON-EXISTENCE**

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[SEAL]

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of State, at my office, in Carson City, Nevada, on August 29, 1996.

/s/ Dean Heller
Secretary of State

By /s/ ?
Certification Clerk

ROBERT L. JOHNSON, ESQ./BAR NO. 005679
BRIAN P. WORTHINGTON, ESQ./BAR NO. 006179
RYAN, MARKS & JOHNSON
317 South Sixth Street
Las Vegas, Nevada 89101
(702)471-7270/ FAX (702)471-1245

Attorneys for Plaintiff UNITED STATES FIDELITY & GUARANTY COMPANY

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

| | |
|---|---|
| UNITED STATES FIDELITY & GUARANTY COMPANY,<br><br>Plaintiff,<br><br>v.<br><br>ROBERT KAHRE AND DOES I - X INCLUSIVE<br><br>Defendants, | CV-S-96-00742-HDM(RJJ)<br>DECLARATION OF JERRY LANDSMAN, JR., IN SUPPORT OF PLAINTIFF'S APPLICATION FOR DEFAULT JUDGMENT [FRCP 55(B)(2)] |

I, Jerry Landsman, Jr., declare as follows:

1. I am a Senior Security Auditor for Plaintiff UNITED STATES FIDELITY & GUARANTY COMPANY (hereinafter "USF&G"). I was personally involved in many of the discussions and negotiations with Defendant ROBERT KAHRE (hereinafter "Kahre")

concerning matters which are the subject of this case.

2. I am informed and believe Kahre was or is the owner and/or operator of two businesses located in Nevada, Wright's Painting & Drywall and Bobby K's Carpet Cleaning Service. In early 1994, Kahre bought two insurance policies from USF&G, one for each of these businesses. These policies were in effect from January 14, 1994 to January 14, 1995. Both policies were renewed for 1/14/95-11/14/96 and 11/14/96-1/14/97.

3. The policies for Wright's Painting contained, among other things, two types of

(end of page 1)

coverages entitled "Premises Operations" and 'Products Completed." The "Premises Operations" aspect of the policies provides coverage for certain injuries or damages which occur while Wright's and its employees were performing their work at a particular site. The "Products Completed" aspect of the policies provides Wright's coverage for certain injuries or damages which occur after it completed work at the particular site. While the Bobby K's policies contained "Premises Operations" coverage, they did not contain "Products Completed" coverage. (Unlike Wright's Painting & Drywall, a carpet cleaning business such as Bobby K's generally does not need insurance for damage occurring after the work is completed, as this is not a significant type of risk for that line of business.)

4. The premiums for the "Premises Operations" and "Products Completed" portions of the policies were based on a percentage of the particular business's payroll. At the beginning of each policy period, Kahre would estimate the amount of the payroll for both Wright's and Bobby K's for the upcoming year. The initial premium would be calculated based on these estimates. At the end of the policy period,

Kahre would report the actual payroll amount for the last year to USF&G. USF&G would either bill for the additional premium or issue a return premium, depending on whether the actual payroll was higher or lower than the original estimate. As reflected in the policies, USF&G maintained the right to conduct an audit of the businesses' payrolls to determine the accuracy of Kahre's reporting.

5. While USF&G was performing an audit in 1996, Kahre told me he does not pay the employees of Wright's Painting and Bobby K's in U.S. currency. He has silver coins specially minted and pays his employees with such coins. These coins are .999% pure silver and each consists of one ounce of silver.

6. I have previously seen the document attached to the accompanying Points and Authorities as Exhibit I entitled "Private Contract Agreement/Statement of Purpose." This document reflects his policy of paying his employees in this specially minted coins. It states that every employee will be paid with these coins in accordance with the official silver exchange rate at the time of the payment. Thus, if an employee is to be paid $2,000, he would be given the number of silver coins which equals $2,000 according to the official

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silver exchange rate at the time. Kahre told me he has each Wright's Painting and Bobby K's employee sign such a document.

7. Despite this stated policy, Kahre expressly told me at the time of the audit he actually treats one of his silver coins as one dollar, regardless of the official silver exchange rate. Therefore, an employee to be paid $2,000 would actually receive 2,000 of these silver coins, even though the exchange rate for silver at the time was greater than one dollar per ounce. It is my understanding the silver exchange rates

during the times the subject policies were in effect were typically about $5 per ounce of silver. However, he indicated, when he reported the payroll amounts to USF&G for purposes of calculating his policy premiums, he calculated these payroll figures based on the number of coins he paid. Thus, if one of the companies paid a total of 60,000 coins as payroll, Kahre would report a payroll of $60,000. Because of the higher actual value of these coins, Kahre was paying his employees about five times more than what he reported to USF&G.

8. I contacted Kahre and his insurance brokers to discuss the policy premiums and the payroll calculations he supplied to USF&G; because his payrolls were actually five times greater than reported, the Wright's Painting and Bobby K's premiums for the "Premises Operations" and "Products Completed" coverage would also be five times greater. In accordance with the policy terms. USF&G requested a further audit. Upon completion of the audit, USF&G recalculated the premiums and billed Wright's Painting and Bobby K's. During the informal discussions with me, Kahre never disputed he owed the additional premiums. Nevertheless, he never paid any of these outstanding amounts.

9. I was not aware Kahre paid his employees with the silver coins before the initial audit in 1996, and I am informed and believe no one else at USF&G had prior knowledge of this payment method either. Kahre had paid the premiums for the Wright's Painting and Bobby K's policies in standard U.S. currency.

10. To my knowledge, USF&G has no information as to the amount of each specific payment made to any of Wright's or Bobby K's employee on any specific date; we know only the actual amount of the total payrolls for these businesses

for each of the policy

(end of page 3)

periods.

11. Attached as Exhibit 5 to the accompanying Points and Authorities are copies of charts indicating the silver exchange rates for each date within the applicable policy periods Upon my request for this case, I was given these charts by the USF&G Treasury Department for purposes of determining the actual amount of the payrolls for Wright's Painting and Bobby K's for the applicable policy periods.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information and belief, and if called to testify as such I would be able to competently do so.

Executed on April 28th, 1998, at Baltimore, Maryland

/s/ Jerry Landsman, Jr.
Jerry Landsman, Jr.

ROBERT L. JOHNSON, ESQ./BAR NO. 005679
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Attorneys for Plaintiff UNITED STATES FIDELITY & GUARANTY COMPANY

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

| | |
|---|---|
| UNITED STATES FIDELITY & GUARANTY COMPANY,<br><br>Plaintiff,<br><br>v.<br><br>ROBERT KAHRE AND DOES I - X INCLUSIVE<br><br>Defendants, | CV-S-96-00742-HDM(RJJ)<br>DECLARATION OF BRIAN P. WORTHINGTON IN SUPPORT OF PLAINTIFF'S APPLICATION FOR DEFAULT JUDGMENT [FRCP 55(B)(2)] |

I, Brian P. Worthington. declare as follows:

1. 1 am an attorney duly licensed to practice in all State courts in the State of Nevada; I am licensed to practice before the U.S. District Court for the Southern District of California, and I have an application pending to be admitted to the U.S. District Court for the District of Nevada. I am an

associate with the law firm of RYAN, MARKS & JOHNSON, attorneys of record for Plaintiff UNITED STATES FIDELITY & GUARANTY COMPANY ("USF&G").

2. I received the charts which are attached to the accompanying Points and Authorities as Exhibit 5 from Jerry Landsman, a Senior Security Auditor for USF&G. These charts indicate the official silver exchange rates for the applicable policy periods. I used these charts to determine the average silver exchange rate for each of the individual policy

(end of page 1)

periods. I determined these average rates by ADDING all of the exchange rate amounts during each period, and dividing the total by the number of days for which a rate was listed. (It appears there are no exchange rates listed for official holidays.)

3. The average silver exchange rate during the period of January 14, 1994 to January 14, 1995 was $5.274 per ounce. The average silver exchange rate during the period of January 14, 1995 to January 14, 1996 was $5.224 per ounce. The average silver exchange rate during the period of January 14, 1995 to June 13, 1996 was $5.456 per ounce.

4. I have been informed by Helen Forbis that, after an exhaustive search, she has been unable to locate the portion of the audit file indicating the final payroll amount for Bobby K's Carpet Cleaning which Kahre reported to USF&G for the 1/14/95 to 1/14/96 policy. (Ms. Forbis is the Staff Specialist of the USF&G Audit Department presently in charge of the territory which includes Las Vegas NV.) Nonetheless, from the available data, I have been able to extrapolate the amount reported.

5. Ms. Forbis informed me the audit documentation

indicates the actual payroll for that policy period, after consideration of the silver exchange rate, was $213,887.00. (See ¶7 of her Declaration.) However. this is not the accurate amount of the actual payroll because the original audit used the incorrect average silver exchange rate for this policy period. This can be seen through an evaluation of the original audit figures for the 1/14/95-1/14/96 Wright's Painting policy. Those figures indicated Kahre reported a final payroll amount of $105,845. They also indicate the actual final payroll (with adjustment for the silver exchange rate) was $793,838. Dividing those two numbers will reveal the silver exchange rate used by the auditors. However, dividing those numbers reveals a silver exchange rate of $7.500 per ounce. As indicated on Exhibit 5 and in ¶3, above, the average silver exchange rate for this period was only $5.224 per ounce. Therefore, when calculating the actual payroll for Wright's Painting for that period. I multiplied the final payroll reported times the correct, lower average exchange rate of 5.224 per ounce.

6. The same method can be used in reverse to determine the reported payroll for Bobby K's for 1/14/95 to 1/14/96. As noted, the audit revealed a final payroll (adjusted for

(end of page 2)

the exchange rate) of $213,887. The auditors originally arrived at that amount by multiplying the reported payroll times the same $7.500 silver exchange rate as was used for the Wright's Painting policy of the same period. (See the Lehrfield Declaration, filed herewith, ¶6.) Therefore, to obtain the payroll amount Kahre reported for Bobby K's during this period, I divided $213,887 by $7.500. This equals $28,518. Consistent with the other policy periods, I then multiplied the $28,518 times the accurate silver exchange rate of $5.224

per ounce. Thus, the actual payroll for Bobby K's during this policy period was only $148,978.03.

I declare under the penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information and belief, and if called to testify as such I would be able to competently do so.

Executed on 4/30, 1998, at San Diego, California.

/s/ Brian P. Worthington
Brian P. Worthington